No. 295

JOINT APPENDIX

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,975

ASSOCIATION OF LITHUANIAN WORKERS,
Appellant,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, *Appellee.*

Appeal From the United States District Court for the District of Columbia

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Appeal From the United States District Court for the District of Columbia

JOINT APPENDIX

Filed Feb. 1, 1954

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 406-54

ASSOCIATION OF LITHUANIAN WORKERS, 110-04 Atlantic Avenue, Richmond Hill, New York, *Plaintiff*,

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, Department of Justice, Washington, D. C., *Defendant*.

Complaint for Injunctive Relief

The plaintiff, Association of Lithuanian Workers, by its attorneys, complaining of the defendant, alleges:

1. The Court has jurisdiction of this action under D. C. Code, sections 11-305 and 11-306.

2. The plaintiff, Association of Lithuanian Workers, is a fraternal benefit society, incorporated under the laws of the State of New York. It received its preliminary certificate of authority pursuant to Article 7 of the New York Insurance Law on November 5, 1930 and its final certificate of authority on July 7, 1931.

3. The defendant, Herbert Brownell, Jr., is the Attorney General of the United States. He has his principal office, and may be found, in the District of Columbia.

4. The purposes and objects of the plaintiff are those set forth in its Constitution and By-Laws, as follows:

(a) To unite persons of Lithuanian descent, regardless of their political, religious or social beliefs, into one fraternal body; to encourage and to assist members, and their families, who are not yet citizens of the United States to become citizens; to participate in cultural and educational

activities beneficial to members and their families; to promote fraternal relations among the members and to render material assistance to those members and their families who are in misfortune by establishing necessary funds for that purpose.

(b) To further the ideals of benevolence and to
2 aid financially those who are dependent upon its members for their maintenance and support, by establishing a disability fund from which payments shall be made to the members during periods of sickness or disability, and also a mortuary insurance fund from which, upon the death of any member in good standing, payments shall be made to the beneficiary named by the member in such an amount as shall be provided for in membership certificates.

(c) To establish and maintain subordinate lodges into which members shall be elected, initiated and admitted in accordance with this Constitution and By-Laws.

5. Plaintiff is governed, and its policies are determined by, its members, acting independently pursuant to democratic provisions of plaintiff's Constitution and By-Laws. Under said Constitution and By-Laws, officers of the plaintiff must be citizens of the United States and are elected by referendum vote of the membership every two years. The officers of plaintiff are: John Gasiunas, President; Joseph J. Mockaitis, Vice President; George Zebrys, Second Vice President; John Siurba, Secretary; Joseph Weiss, Treasurer; Dr. M. D. Palevitch, Chief Medical Examiner; and Alda Orman, Helen N. Yeskevich, and Stanley Kuzmickas, Trustees.

6. Plaintiff operates an insurance program and business for the mutual benefit of its members and their beneficiaries, and not for profit. The plaintiff functions under the lodge system, as defined in Section 451 of the New York Insurance Law, and presently has 167 lodges in 18

states, in nine of which it is duly licensed and in nine of which it is permitted to maintain lodges without license. Application for membership is made through the lodges, and there are presently approximately 7,000 members.

7. Plaintiff's insurance business includes various types of life and disability insurance. Plaintiff's Constitution and By-Laws establishes the terms of its insurance program and the various options and schedule of premium payments. Each member receives an individual policy covering the insurance issued to him. Each member pays monthly dues, which include payment for his insurance benefits plus a nominal amount for general expense. The dues paid for benefits are segregated, placed in the separate benefit accounts, and are used for no other purpose except payment of the respective benefits. The dues paid for expenses are also segregated in a separate expense fund, and are used for no other purpose except for expenses.

8. The plaintiff files, and since its formation has filed, comprehensive annual reports in each of the states in which it holds a license. In addition, periodic examinations of the plaintiff are and have been made by the Insurance Department of the State of New York.

9. The plaintiff is in sound financial condition and no question has ever been raised concerning its financial status or its methods of conducting business. During the 23 years of its existence, the plaintiff has paid out approximately $638,000 in death benefits and approximately $607,000 in sick benefits, or a total of approximately $1,245,000. The face value of life insurance presently carried by its membership amounts to more than $3,000,000. The plaintiff has assets of $1,134,000, more than $300,000 in excess of legal requirements and in the ratio of 134% to liabilities.

10. In connection with its insurance business, the plaintiff arranges for lectures to its members and has dis-

tributed pamphlets and articles to its members on subjects of health comparable to similar activities of commercial insurance companies. The plaintiff and its lodges also conduct occasional recreational and sporting events for its members, like bowling and golf tournaments. During World War II, the plaintiff raised $350,000 in voluntary contributions for the purchase of two bombers for use by the Armed Forces. The plaintiff itself purchased more than $445,000 in war bonds, and conducted campaigns for the purchase of such bonds by its members. More than one thousand of the plaintiff's members served in the Armed Forces, twenty of whom were killed in action.

11. Executive Order 10450, issued by the President in April, 1953, establishes "security requirements for government employment." Executive Order 10450 requires the head of each federal department and agency to establish and maintain "an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security". It also provides that, "the interests of the
4 national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States."

12. Executive Order 9835 issued March 21, 1947, had required the Department of Justice to furnish to the Loyalty Review Board, for use in the administration of the government employees loyalty program, the names of organizations designated by the Attorney General, after appropriate investigation and determination, "as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking

to alter the form of government of the United States, or as seeking to alter the form of government of the United States by unconstitutional means." Executive Order 10450 provides that the Department of Justice shall continue to furnish this information, but directly to the head of each department and agency.

13. Under Executive Orders 10450 and 9835 and their application, membership in, or affiliation or sympathetic association with, an organization designated by the Attorney General as aforesaid, adversely affects the eligibility of any person for federal employment under the aforementioned standards of Executive Order 10450.

14. Designation of an organization by the Attorney General under Executive Orders 9835 or 10450 seriously injures the reputation, business, and prestige of the organization and its ability to obtain or retain members and revenue. Various governmental sanctions apply to members of such an organization even though they are not government employees or applicants for government employment. By the Act of July 5, 1952, the Independent Offices Appropriation Act, 1953, no housing unit constructed under the United States Housing Act of 1937, as amended, may be occupied by a person who is a member of an organization so designated. Also various state and local governments have adopted legislation imposing special sanctions on members of such organizations or depriving them of rights and privileges which would otherwise be available to them.

5 15. On May 4, 1953, the plaintiff received a letter from the defendant dated April 29, 1953, stating that the defendant proposed to designate the plaintiff "as coming within the purview of Executive Orders No. 9835 and No. 10450."

16. Under regulations issued by the defendant, an organization served with notice of the Attorney General's proposal to designate it under Executive Orders 9835 and

10450 may file a notice with the defendant that it desires to contest such designation. Under the regulations, an organization which files a notice of contest may obtain an administrative hearing on the proposal. The regulations provide that failure to file such a notice "shall be deemed an acquiescence" in the proposed action. On or about May 8, 1953, plaintiff duly filed with the defendant a notice of contest.

17. On July 13, 1953, the plaintiff received from the defendant a statement, dated July 8, 1953, of the grounds upon which the defendant proposed to designate the plaintiff as aforesaid, together with twenty-three interrogatories, each of them containing at least two distinct questions or requests for information. The purport of the statement of grounds is that the plaintiff was organized and has functioned under the direction, control and influence of the Communist Party and of members thereof.

18. Said statement of grounds is vague, indefinite, and couched in general and all-embracing language. It does not give plaintiff adequate notice of the charges against it and does not enable plaintiff to adequately defend itself. Plaintiff could answer or offer evidence in defense of the charges only by assembling and offering the most detailed facts concerning every conceivable aspect of its activities for the period of twenty-three years of existence, including facts relating to past and present members, officers and employees, and to every other person with whom plaintiff has had dealings or relationships, no matter how ephemeral, insignificant, or indirect, including facts which plaintiff cannot be reasonably expected to know and which it cannot be reasonably expected to be able to ascertain even with the most intensive effort.

6 19. The aforesaid interrogatories would require the plaintiff to furnish an immense mass of detailed information and data, much of it obscurely defined, much of it patently unavailable to plaintiff and unobtainable, and

virtually all of it of no possible relevance. It would entail a huge and expensive burden for plaintiff to obtain and compile so much of the information requested as is possible to obtain. The thrust and effect of the statement of grounds and interrogatories are to make it impossible for plaintiff to answer the statement and interrogatories, and to lay an artificial foundation for the defendant to hold plaintiff in default and deny it the hearing which the defendant's regulations purport to make available.

20. On or about September 8, 1953, the plaintiff wrote defendant, making objections to the defendant's interrogatories and to the rules of procedure established by the defendant's regulations. The defendant did not reply to this letter.

21. Thereafter, plaintiff retained counsel. On October 4, 1953, plaintiff's counsel wrote the defendant, pointing out the improper and illegal nature of the interrogatories and the impossibility of answering them. Plaintiff's counsel also stated in this letter that the plaintiff desired a hearing, but that the hearing should not be conditioned on answering interrogatories other than the first three, and that the hearing should conform to the requirements of due process. Counsel asked that the defendant withdraw all but the first three interrogatories, and that he accord a hearing in which plaintiff would be advised of the witnesses and testimony against it, have the opportunity to cross-examine witnesses and to produce evidence in its own behalf, and that there not be received in the proceeding, as contemplated by defendant's regulations, ex parte evidence, not disclosed to plaintiff nor subject to cross-examination.

22. By letter dated November 25, 1953, the defendant advised plaintiff's counsel that he construed the aforesaid letter of the plaintiff dated September 8, 1953 as a rejection of the opportunity for a hearing, and that
7 counsel's letter could not be recognized as a request

for a hearing because it was not timely and was not signed by the executive officers of the plaintiff. The construction of plaintiff's letter which defendant claimed he made was arbitrary, unfounded, and irrational.

23. By letter dated December 4, 1953, counsel for the plaintiff replied to the defendant's letter of November 25, 1953, stating that the plaintiff's said letter of September 8, 1953, did not, expressly or by implication, reject a hearing, and renewing his request for the withdrawal of said interrogatories and his request for a hearing. The defendant did not reply to this letter of December 4, 1953.

24. On January 22, 1954, the defendant, without notice or hearing, summarily designated plaintiff as an organization within the purview of Executive Orders 10450 and 9835. The defendant did not even notify plaintiff of this action, and plaintiff first learned about it as a result of a phone call made by its counsel to the Department of Justice.

25. The defendant's designation of the plaintiff as an organization under Executive Orders 10450 and 9835 is contrary to fact and without foundation. The plaintiff is not an organization of any of the kinds referred to in Executive Orders 10450 and 9835.

26. The defendant's designation of the plaintiff under Executive Orders 10450 and 9835 is illegal in the following respects:

(a) It was made without notice and hearing, in violation of the due process clause of the Fifth Amendment, the Administrative Procedure Act, and the defendant's own regulations.

(b) The provisions of Executive Orders 10450 and 9835 relating to designation of organizations, on their face and as applied, violate the First Amendment, in that they authorize and represent a species of governmental censorship of expression and assembly, and permit and are en-

ployed to proscribe organizations on the basis of views and policies.

(c) The provisions of Executive Orders 10450 and 9835, on their face and as applied, violate the due process clause of the Fifth Amendment, in that they authorize and represent the imposition of onerous sanctions and invasion of property rights and right of reputation on the basis of indefinite, subjective, and meaningless criteria, which can be, and are, interpreted to apply merely because of defendant's political, social, or economic prejudices.

(d) The provisions of Executive Orders 10450 and 9835, on their face and as applied, violate the Ninth and Tenth Amendments, in that they authorize and represent the imposition of onerous sanctions for no valid governmental purpose and without reasonable relation to the powers granted to the federal government and the executive under the Constitution.

(e) The provisions of Executive Orders 10450 and 9835, on their face and as applied, violate the prohibition against bills of attainder, in that they authorize and represent the imposition of punishment without judicial trial.

(f) The defendant has violated the Executive Orders in that he has designated the plaintiff without appropriate investigation and determination, and without regard to the fact that the plaintiff is not in fact an organization of any of the kinds described in Executive Orders 10450 and 9835.

(g) The defendant's designation of plaintiff is arbitrary and capricious.

27. The procedures and regulations established by the defendant for the designation of organizations under the Executive Order are illegal and violative of due process, in that:

(a) The regulations authorize the Attorney General to find adversely to an organization merely on his statement of grounds and without introducing evidence, and upon information not of record as to which the accused organization had no opportunity to confront or cross-examine the informant.

(b) The regulations contemplate the application of the vague and indefinite standards of the Executive Orders.

(c) The regulations do not provide that the burden of proof shall be on the Attorney General.

(d) The regulations require the accused organization to submit to unlimited and improper interrogation by the Attorney General as a condition to obtaining a hearing.

(e) The regulations authorize the Attorney General to handpick a hearing officer without regard to qualifications, competency, impartiality, or independence of position.

(f) The regulations violate the provisions of the Administrative Procedure Act governing the conduct of administrative hearings.

28. The illegal designation of the plaintiff under Executive Order 10450 and 9835 has caused, and will increasingly continue to cause, irreparable injury to plaintiff and to plaintiff's members, for which neither the plaintiff nor its members have an adequate remedy at law. Such injury includes damage to the plaintiff's business as a fraternal benefit society and to the plaintiff's reputation, and prestige, loss of present and prospective members, and loss of membership dues. If defendant is not enjoined, the continued injury threatens to destroy plaintiff's very existence.

WHEREFORE, the plaintiff demands judgment (1) enjoining the defendant, his officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with him, from continuing the designation of the plaintiff under Executive Orders 10450 and 9835; (2)

requiring the defendant to notify all federal departments and agencies and the public that such designation of plaintiff is withdrawn; (3) awarding the plaintiff the costs of this action; and (4) granting plaintiff such other and further relief as may be appropriate.

Filed April 2, 1954

Answer

Now comes defendant, and in answer to the complaint, says as follows:

FIRST DEFENSE

1. Answering paragraph 1 of the complaint, defendant denies that the Court has jurisdiction of this action.

2. Answering paragraph 2 of the complaint, defendant admits that plaintiff was duly incorporated under the laws of the State of New York. Except as admitted by the foregoing statement, the allegations of paragraph 2 of the complaint are denied.

3. Answering paragraph 3 of the complaint, defendant admits the allegations contained therein.

4 through 10. Answering paragraphs 4 through 10 of the complaint, defendant, upon information and belief, admits that the Constitution and By-Laws of plaintiff set forth as alleged objects of plaintiff those listed in paragraph 4 of the complaint; that said Constitution and By-Laws set forth provisions that officers of plaintiff must be citizens of the United States and must be elected by vote of the membership every two years; that the officers of plaintiff are those listed in paragraph 5 of the complaint; that plaintiff, among its other activities, operates an in-
11 surance program and business under the lodge system as defined in Section 451 of the New York Insurance Law; that the Constitution and By-Laws of plaintiff and the New York Insurance Law make provision

for, among other things, various options and schedules of premium payments, issuance of individual policies, payment of monthly dues used in part for insurance benefits, and separation of part of the monthly dues in various benefit accounts; that plaintiff has or recently has had 167 lodges, more or less, and 7,000 members, more or less, in 18 states, and has or recently has had assets of $1,134,000, more or less; that plaintiff is required by the State of New York to submit to periodic fiscal examinations of its insurance program, and is required by New York and other states in which it is licensed to file annual reports which show, among other things, amount of death benefits and sick benefits paid out and face value of life insurance carried by members of plaintiff.

And, notwithstanding the above admissions, defendant, upon information and belief, avers that: (1) prior to or during 1930, the Communist Party of the United States of America (hereinafter referred to as Communist Party—U.S.A.) received orders from Moscow to capture control of or destroy as many organizations in America as possible; that (2) as a result of action taken pursuant to such orders there was a split between the anti-Communist and pro-Communist factions at the National Convention of the Lithuanian Alliance of America held at Chicago, Illinois, in 1930; that (3) as a result of said split plaintiff organization (also known as the Lietuvia Darbiniku Susivienijimas and hereinafter referred to as the L.D.S.) was formed by persons who were members of, affiliated with, or sympathetically associated with the Communist Party—U.S.A., that from its initial formation up to and including
the date of this statement the L.D.S. has (4) consti-
12 tuted a vehicle to further the aims, policies and objectives of the Communist Party—U.S.A., operating as an instrument to promote affairs and functions designed to publicize and implement policies of the Communist Party—U.S.A.; (5) been used by the Lithuanian Central Bureau of the Communist Party—U.S.A. as a means to

distribute Communist propaganda through printed material, speakers and other media; (6) functioned and operated under the leadership of persons who were at one time, and are at the time of this statement, members of, affiliated with, or sympathetically associated with the Communist Party—U.S.A. and other groups officially designated by the Attorney General pursuant to Executive Orders 9835 and 10450; (7) permitted determination of its policies by and in collaboration with the Communist Party—U.S.A., its leaders, members and other persons affiliated with or sympathetically associated with the Communist Party—U.S.A.; (8) solicited and accepted, directly or indirectly, the assistance and support of the Communist Party—U.S.A. and persons who are members of, affiliated with, or sympathetically associated with the Communist Party—U.S.A. for its program, activities and functions; (9) conducted, sponsored and co-sponsored and caused to be sponsored, receptions, parties, meetings and similar events for the purpose of carrying out the policies of the Communist Party—U.S.A.; (10) distributed funds realized from affairs and functions and similar events to the Communist Party—U.S.A., its leaders and persons who are members of, affiliated with, or sympathetically associated with the Communist Party—U.S.A., to the *Daily Worker*, and to groups officially designated by the Attorney General pursuant to Executive Orders 9835 and 10450; (11) engaged and invited persons who were members of, affiliated with, or sympathetically associated with the Communist Party—U.S.A. to speak at functions and meetings conducted, sponsored and co-sponsored by plaintiff; (12) published and circulated and caused to be published and circulated,

13 three newspapers, namely, TIESA, VILNIS, and LAISVE which have consistently supported and implemented policies, aims, and objectives of the Communist Party—U.S.A.; and (13) never knowingly deviated in its program and objectives from the program and objectives of the Communist Party—U.S.A.

Except to the extent admitted by the foregoing statements, the allegations of paragraphs 4 through 10 are denied.

11, 12, 13, and 14. Answering paragraphs 11, 12, 13 and 14 of the complaint, defendant says that Executive Order 9835, appearing at 12 F.R. 1935 as amended by 16 F.R. 3690; and Executive Order 10450, appearing at 18 F.R. 2489; and the Acts of July 5, 1952 and July 31, 1953, appearing at 42 U.S.C. 1411(c) speak for themselves, and respectfully refers the Court to said Orders and Acts for the full meaning, purport and effect thereof.

Except as admitted by the foregoing statement, the allegations of paragraphs 11, 12, 13 and 14 of the complaint are denied.

15. Answering paragraph 15 of the complaint, defendant admits that on April 29, 1953, there was deposited in the United States mails a prepaid, registered letter addressed to plaintiff containing notice of defendant's proposal to designate plaintiff, in accordance with the rules of procedure thereto attached, as an organization coming within the purview of Executive Orders 9835 and 10450. A copy of said letter is annexed to this answer as Exhibit 1, and is expressly made a part hereof. Said letter speaks for itself, and defendant respectfully refers the Court to said letter for the full meaning, purport and effect thereof.

Except to the extent admitted by the foregoing statement, the allegations of paragraph 15 of the complaint are denied.

16. Answering paragraph 16 of the complaint, defendant admits that on April 29, 1953, pursuant to Executive Orders 9835 and 10450, he promulgated certain rules of procedure with respect to Designation of Organizations in Connection with the Federal Employee Security Program. Said rules appear at 18 F.R. 2619, and a copy of said rules is annexed to this answer as Exhibit 2, and is expressly made a part hereof. Defendant says that

said rules speak for themselves, and respectfully refers the Court to said rules for the full meaning, purport and effect thereof.

Further answering paragraph 16 of the complaint, defendant states that on May 11, 1953 he received a registered letter signed by the president and the secretary of plaintiff, indicating that plaintiff proposed to contest the proposed designation. A copy of said letter is annexed to this answer as Exhibit 3, and is expressly made a part hereof. Said letter speaks for itself, and defendant respectfully refers the Court to said letter for the full meaning, purport and effect thereof.

Except to the extent admitted by the foregoing statements, the allegations of paragraph 16 of the complaint are denied.

17. Answering paragraph 17 of the complaint, defendant admits that on July 8, 1953, there was deposited in the United States mails a prepaid, registered notice addressed to plaintiff containing a Statement of Grounds and also Interrogatories. A copy of said Statement of Grounds and Interrogatories is annexed to this answer as Exhibit 4, and is expressly made a part hereof. Said Statement of Grounds and Interrogatories speak for themselves, and defendant respecfully refers the Court to said Statement and Interrogatories for the full meaning, purport and effect thereof.

Except as admitted by the foregoing statement, the allegations of paragraph 17 of the complaint are denied.

18 and 19. Answering paragraphs 18 and 19 of the complaint, defendant denies each and every allegation contained therein.

20. Answering paragraph 20 of the complaint, defendant admits that on September 9, 1953, he received a letter signed by the president and secretary of plaintiff, a copy of which is annexed to this answer as

Exhibit 5, and is expressly made a part hereof. Said letter speaks for itself, and defendant respectfully refers the Court to said letter for the full meaning, purport and effect thereof.

Further answering paragraph 20 of the complaint, defendant avers that said letter failed to comply with Section 41.3—Reply by Organization of the rules of procedure with respect to Designation of Organizations in Connection with the Federal Employee Security Program and did not constitute a reply to the Statement of Grounds and Interrogatories within the meaning of said rules, in that said letter, within the meaning of that section, (a) was not verified, (b) did not answer each interrogatory completely, and with particularity, and (c) was not limited to a statement of facts; and that by such failure to file such reply within said Section 41.3 of said rules of procedure, plaintiff has acquiesced in the proposed designation.

Further answering paragraph 20 of the complaint, defendant avers that, irrespective of the foregoing statement, said letter, within the meaning of Section 41.3 of said rules of procedure, failed to answer any interrogatory or any part thereof or submitted evasive replies to said interrogatories and said letter, therefore, constitutes an admission of the truth of the facts to which said interrogatories refer.

Further answering paragraph 20 of the complaint, defendant avers that said letter, within the meaning of Section 41.4—Request for Hearing of said rules of procedure, did not constitute a request for a hearing.

Except to the extent admitted by the foregoing statements, the allegations of paragraph 20 of the complaint are denied.

21. Answering paragraph 21 of the complaint, defendant admits that on October 7, 1953, he received a letter
16 signed by Harold I. Cammer, a copy of which is annexed to this answer as Exhibit 6 and is expressly made a part hereof. Said letter speaks for itself, and de-

fendant respectfully refers the Court to said letter for the full meaning, purport and effect thereof.

Except to the extent admitted by the foregoing statement, the allegations of paragraph 21 of the complaint are denied.

22. Answering paragraph 22 of the complaint, defendant admits that on November 25, 1953, there was deposited in the United States mails, addressed to Harold I. Cammer, a letter, a copy of which is annexed to this answer as Exhibit 7, and expressly made a part hereof. Said letter speaks for itself, and defendant respectfully refers the Court to said letter for the full meaning, purport and effect thereof.

Further answering paragraph 22 of the complaint, defendant avers that the letter received on October 7, 1953 and signed by Harold I. Cammer fails to comply with Section 41.3—Reply by Organization, and Section 41.4—Request for Hearing, of the rules of procedure with respect to Designation of Organizations in Connection with the Federal Emplcyee Security Program, for reasons set forth in the averments contained in paragraph 20 of this answer, and defendant realleges each and every one of such averments.

Further answering paragraph 22 of the complaint, defendant avers that the letter dated October 4, 1953 and signed by Harold I. Cammer fails to comply with said Sections 41.3 and 41.4 of said rules of procedure in that letter, within the meaning of said rules of procedure, (a) was not filed within sixty (60) days following receipt of the Statement of Grounds and Interrogatories, and (b) was not signed by the executive officers, or persons performing the ordinary and usual duties of executives officers, of plaintiff.

Except to the extent admitted by the foregoing statements, the allegations of paragraph 22 of the complaint are denied.

17 23. Answering paragraph 23 of the complaint, defendant says that he is not required to answer paragraph 23 because the allegations therein are immaterial, but if required to answer, admits the allegations contained therein.

24. Answering the first sentence of paragraph 24 of the complaint, defendant admits that on January 22, 1954, he designated plaintiff as an organization pursuant to Executive Orders 9835 and 10450.

Answering the second sentence of paragraph 24 of the complaint, defendant avers that notice of such designation was given by publication in the Federal Register on February 4, 1954, being found at 24 F.R. 655.

Defendant states that he is without knowledge or information sufficient to state whether or not plaintiff first learned about its designation as a result of a telephone call made by its counsel to the Department of Justice.

Except to the extent admitted by the foregoing statements, the allegations of paragraph 24 of the complaint are denied.

25. Answering paragraph 25 of the complaint, defendant denies each and every allegation contained therein.

26, 27 and 28. Answering paragraphs 26, 27 and 28 of the complaint, defendant says that he is not required to answer the allegations contained therein for the reasons that they are wholly argumentative and state merely conclusions of law and/or fact, but if required to answer, denies each and every one of said allegations.

Second Defense

Plaintiff's failure to avail itself of the opportunity to obtain a full administrative hearing precludes this Court from granting relief.

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Third Defense

The Court is without jurisdiction in that plaintiff has failed to exhaust its administrative remedy.

Fourth Defense

The public interest requires that in a balancing of the equities involved the relief sought by plaintiff be denied.

Fifth Defense

The complaint does not present a justiciable controversy over which the Court has jurisdiction.

Sixth Defense

The Court is without jurisdiction of the subject matter of this action in that plaintiff seeks to subject to judicial review executive action which is committed by law to the sole and exclusive discretion of the executive.

Seventh Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Wherefore, defendant prays that the complaint be dismissed in all respects with costs to the defendant.

Exhibit 1

20 Filed April 2, 1954

April 29, 1953

Registered—Return
Receipt Requested

Association of Lithuanian Workers
110-04 Atlantic Avenue
Richmond Hills 19, New York

Sirs:

Notice is hereby given that the Attorney General proposes to designate the Association of Lithuanian Workers as coming within the purview of Executive Orders No. 9835 and No. 10450 in accordance with the rules promulgated thereunder, a copy of which is attached hereto.

For the Attorney General

WARREN OLNEY III
Assistant Attorney General

Enclosure No. 27613

Exhibit 3

Filed April 2, 1954

ASSOCIATION OF LITHUANIAN WORKERS
LIETUVIU DARBININKU SUSIVIENIJIMAS

110-04 Atlantic Avenue
Richmond Hill 19, N. Y.

Phone VIrginia 9-3692

May 8, 1953

Hon. Warren Olney III
Assistant Attorney General
United States Department of Justice
Washington 25, D. C.

Dear Sir:

We hereby acknowledge receipt of your letter dated April 29th, 1953 giving the Association of Lithuanian Workers notice that the Attorney General proposes to designate said Association as coming within the purview of Executive Orders No. 9835 and No. 10450.

Pursuant to Section 41.1(b), this is to give you notice that the Association of Lithuanian Workers desires to contest such designation.

Very truly yours,

ASSOCIATION OF LITHUANIAN WORKERS

/s/ JOHN GASIUNAS *President*
John Gasiunas

/s/ JOHN SIURBA *Secretary*
John Siurba

Registered Return Receipt Requested

Exhibit 4

26 Filed April 2, 1954

IN THE MATTER OF THE PROPOSED DESIGNATION OF ASSOCIATION OF LITHUANIAN WORKERS PURSUANT TO EXECUTIVE ORDER 10450

TO: ASSOCIATION OF LITHUANIAN WORKERS

PLEASE TAKE NOTICE that pursuant to Title 28, Chapter I, Part 41, Section 41.1 et seq. of the Code of Federal Regulations with respect to notice, hearing, and designation of organizations in connection with the Federal employee security program, there are set forth hereinafter a statement of the grounds upon which it is proposed to designate Association of Lithuanian Workers as coming within the purview of Executive Order No. 10450, and interrogatories with respect thereto.

STATEMENT OF GROUNDS

(1) Prior to or during 1930, the Communist Party of the United States of America (hereinafter referred to as the Communist Party—U.S.A.) received orders from Moscow to capture control of or destroy as many organizations in America as possible.

(2) As a result of action taken pursuant to said orders, there was a split between the anti-Communist and pro-Communist factions at the National Convention of the Lithuanian Alliance of America held at Chicago, Illinois in 1930.

(3) As a result of said split at the National Convention of the Lithuanian Alliance in 1930, the organization known as the Association of Lithuanian
27 Workers and also known as the Lietuviu Darbininku Susivienijimas (both hereinafter referred to as L.D.S.) was formed by persons who were members of, affiliated and sympathetically associated with the Communist Party—U.S.A.

(4) The L.D.S. was incorporated in the State of New York on or about October 14, 1930 to commence business on or about November 1, 1930 for the alleged and ostensible purpose of providing sick and death insurance benefits to its members.

(5) The national headquarters for the L.D.S. has been and is located in New York City, and the L.D.S. maintains lodges and branches in many of the other principal cities in the United States.

(6) From its initial formation, up to and including the date of this statement, the L.D.S. has constituted a vehicle to further the aims, policies and objectives of the Communist Party—U.S.A., operating at all times as an instrument to promote affairs and functions designed to publicize and implement policies of the Communist Party—U.S.A.

(7) From its initial formation, up to and including the date of this statement, the L.D.S. has been used by the Lithuanian Central Bureau of the Communist Party—U.S.A. as a means to distribute Communist propaganda through printed material, speakers and other media.

(8) From its initial formation, up to and including the date of this statement, the L.D.S. has functioned and operated under the leadership of persons who were at one time, and are presently, members of, affiliated and
28 sympathetically associated with the Communist Party—U.S.A. and other groups officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835

(9) From its initial formation, up to and including the date of this statement, the policies of the L.D.S. have been determined by and in collaboration with the Communist Party—U.S.A., its leaders, members and other persons affiliated and sympathetically associated with the Communist Party—U.S.A.

(10) From its initial formation, up to and including the date of this statement, the L.D.S. has solicited and accepted, directly or indirectly, the assistance and support of the Communist Party—U.S.A. and persons who are members of, affiliated and sypathetically associated with the Communist Party—U.S.A. for its program, activities and functions.

(11) From its intial formation, up to and including the date of this statement, the L.D.S. has conducted, sponsored and co-sponsored and caused to be conducted, sponsored and co-sponsored receptions, parties, meetings and similar events for the purpose of carrying out the policies of the Communist Party—U.S.A.

(12) Funds realized from affairs and functions conducted, sponsored and co-sponsored by the L.D.S. have been distributed and caused to be distributed by the L.D.S. to the Communist Party, U.S.A., its leaders and persons who are members of, affiliated and sympathetically associated with the Communist Party—U.S.A., to the *Daily Worker*, and to groups officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835.

29 (13) From its initial formation, up to and including the date of this statement, the L.D.S. has engaged and invited persons who were members of, affiliated and sympathetically associated with the Communist Party —U.S.A., to speak at functions and meetings conducted, sponsored and co-sponsored by the L.D.S.

(14) From its initial formation, up to and including the date of this statement, the L.D.S. has published and circulated and caused to be published and circulated, three newspapers, namely, TIESA, VILNIS, and LAISVE which have consistently supported and implemented policies, aims and objectives of the Communist Party—U.S.A.

(15) From its initial formation, up to and including the date of this statement, the L.D.S. has never knowingly

deviated in its program and objectives from the program and objectives of the Communist Party—U.S.A.

INTERROGATORIES

INTERROGATORY (1)

(a) State the full name of the L.D.S.

(b) State any other names that the L.D.S. may have used or by which it may have been known.

INTERROGATORY (2)

(a) List the address or addresses (number, street, city and State) where the L.D.S., from its inception, and up to and including the date of these interrogatories, has maintained its principal offices or headquarters.

(b) Does the L.D.S. have any lodges, branches or other subdivisions?

(c) If the answer to Interrogatory 2(b) is in the affirmative, list the address or addresses (number, street, city and State) where the respective lodges, branches or other subdivisions have maintained offices or headquarters from their inception up to and including the date of these interrogatories.

INTERROGATORY (3)

(a) Was the L.D.S. ever incorporated?

(b) If the answer to Interrogatory 3(a) is in the affirmative, list the following information:

i. the state of incorporation;
ii. the date of incorporation;
iii. the state or states in which authorized to do business;
iv. the full name under which incorporated;
v. the alleged purpose for which incorporated.

INTERROGATORY (4)

(a) State the circumstances which preceded and eventually led to the formation of the L.D.S. including the events which took place at the National Convention of the Lithuanian Alliance of America in 1930.

(b) List the names and addresses of all those persons responsible for the formation of the L.D.S.

(c) List the names and addresses of all those persons who initially participated in the organization of the L.D.S.

31 (d) List the names and addresses of all those persons present at the initial meeting of the L.D.S.

(e) Have any of those persons listed in answer to Interrogatories 4(b), 4(c) and 4(d) at any time been

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(f) If the answer to Interrogatory 4(e) or any part thereof is in the affirmative list the names and addresses of all such persons and indicate the periods of time during which they were

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835.

(g) State the address (number, street, city and State) where the initial organization meeting of the L.D.S. took

place, and indicate the date of such meeting and by whom such meeting was called.

INTERROGATORY (5)

(a) List the names and addresses of all employees, directors, executive officers and persons performing the ordinary and usual duties of employees, directors and executive officers of the L.D.S. and its various lodges and branches, from its initial formation up to and including the date of these interrogatories, and indicate the inclusive dates during which each of the listed persons held or acted in such capacity.

(b) Have any of the persons listed in answer to Interrogatory 5(a) at any time been

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

32 (c) If the answer to Interrogatory 5(b) or any part thereof is in the affirmative, list the names and addresses of all such persons and indicate the periods during which they were

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835.

INTERROGATORY (6)

(a) List the names and addresses of all those persons who are presently members of the L.D.S.

(b) Have any of those persons listed in answer to Interrogatory 6(a) at any time been

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(c) If the answer to Interrogatory 6(b) or any part thereof is in the affirmative, list the names and addresses of all such persons and indicate the periods during which they were

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835.

INTERROGATORY (7)

(a) List the names and addresses of persons who have, at any time, been engaged or invited to speak or to appear as guests by the L.D.S. and its various lodges and branches or by officials or members of the L.D.S. and its various lodges and branches at any meetings, conventions or other functions that were conducted, sponsored or co-sponsored by the L.D.S. or any of its various lodges or branches.

33 (b) State as to each such person listed, the date and location of the affair to which invited or engaged to speak or appear as a guest.

(c) Have any of those persons listed in answer to Interrogatory 7(a) at any time been

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(d) If the answer to Interrogatory 7(c) or any part thereof is in the affirmative, list the names and addresses of all such persons and indicate the periods of time during which they were

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835.

INTERROGATORY (8)

(a) Has the L.D.S. or any of its various lodges or branches or its officials or members at any time published or circulated or caused to be published or circulated articles, pamphlets, leaflets, newsletters or other printed material?

(b) If the answer to Interrogatory 8(a) is in the affirmative, list the title of each particular item, the date of publication (day, month and year) and enclose copies of each such item listed with the verified reply.

INTERROGATORY (9)

(a) Has the L.D.S. or any of its various lodges and branches, at any time, knowingly deviated in any manner whatsoever from the policies and program of the Communist Party—U.S.A., its leaders and members?

(b) If the answer to Interrogatory 9(a) is in the affirmative, state the particular points and time of any such deviations.

INTERROGATORY (10)

(a) Has the L.D.S. or any of its various lodges and branches or its officials or members at any time received orders, instructions or recommendations, directly or indirectly, from the Communist Party—U.S.A., its leaders or members?

34 (b) If the answer to Interrogatory 10(a) is in the affirmative, describe the orders, instructions or recommendations received and indicate when, by whom and from whom received, and the manner in which acted upon.

INTERROGATORY (11)

(a) Has the L.D.S. or any of its various branches and lodges, or its officials or members at any time received or solicited funds and contributions from the Communist Party—U.S.A., or from persons who at any time were members of or affiliated or sympathetically associated with the Communist Party—U.S.A., or from any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(b) If the answer to Interrogatory 11(a) is in the affirmative, state the amounts received or solicited, when received or solicited, from whom and by whom received or solicited and the purpose for which received or solicited.

INTERROGATORY (12)

(a) Has the L.D.S. or any of its various branches or lodges or its officials or members ever distributed or shared or caused to be distributed or shared any part of any funds received from any source to or with the

Communist Party—U.S.A., or to or with persons who at any time were members of or affiliated or sympathetically associated with the Communist Party—U.S.A., or to or with any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(b) If the answer to Interrogatory 12(a) is in the affirmative, state the amounts so distributed or shared, when distributed or shared, to or with whom distributed or shared, the purpose for which such distribution or sharing was made, and the source of the funds involved.

INTERROGATORY (13)

(a) Have the newspapers *The Worker* and the *Daily Worker* at any time given publicity coverage to the L.D.S. or any of its various lodges and branches?

(b) If the answer to Interrogatory 13(a) is in the affirmative, specify the newspaper and edition, date and page number where the L.D.S. or any of its various lodges and branches are mentioned.

INTERROGATORY (14)

(a) Did the L.D.S. or any of its various lodges or branches or its officials or members promote or sponsor a collection of funds for the defense of the eleven members of the National Committee of the Communist Party—U.S.A. who were convicted in 1949?

(b) If the answer to Interrogatory 14(a) is in the affirmative, state when, where, how, by whom and from whom the funds were collected, the amount collected, and by whom and to whom the funds were paid.

INTERROGATORY (15)

(a) Does the L.D.S. or any of its various lodges or branches own, operate, control, publish or circulate, di-

rectly or indirectly, any newspapers or other publications?

(b) If the answer to Interrogatory 15(a) is in the affirmative give the name and addresses of such publications, the connection between the L.D.S. or any of its various lodges and branches and the publications.

(c) If the answer to Interrogatory 15(a) is in the affirmative, list the names and addresses of each of the members on the staffs of such publications.

(d) Have any of those persons listed in answer to Interrogatory 15(c) at any time been

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(e) If the answer to Interrogatory 15(d) or any part thereof is in the affirmative, list the names and addresses of all such persons and indicate the periods of time during which they were

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835.

(f) Have any of the publications listed under Interrogatory 15(b) at any time knowingly deviated in any manner whatsoever from the policies or program of the Communist Party—U.S.A. or its leaders?

(g) If the answer to Interrogatory 15(f) is in the affirmative, state the particular points and time of such deviations.

36 INTERROGATORY (16)

(a) Has the Lithuanian Central Bureau of the Communist Party U.S.A. at any time sent or delivered books, pamphlets, newspapers or other printed material to the L.D.S. or to any of its various branches or lodges or its officials or members?

(b) If the answer to Interrogatory 16(a) is in the affirmative, indicate the time and place delivered, by whom and to whom delivered, the type of printed material delivered, and the disposition made of such printed material.

(c) Has the Lithuanian Central Bureau of the Communist Party—U.S.A. at any time provided or arranged for speakers or instructors to participate in any affairs or functions conducted, sponsored or co-sponsored by the L.D.S. or any of its various lodges or branches?

(d) If the answer to Interrogatory 16(c) is in the affirmative, indicate the names and addresses of the speakers or instructors, the nature, time and place of the affairs or functions involved, and the subject matter of the speeches or instruction.

(e) List the names of any officials or members of the L.D.S. or any of its various lodges or branches who at any time have made arrangements with or associated with the Lithuanian Central Bureau of the Communist Party—U.S.A. and indicate the time and place, and describe the nature of such arrangements or associations.

INTERROGATORY (17)

(a) Has the L.D.S. or any of its various lodges or branches ever published or circulated or caused to be published or circulated any books, pamphlets, newspapers or other printed material at the request of the Communist Party—U.S.A. or any section, branch or

club thereof or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(b) If the answer to Interrogatory 17(a) is in the affirmative, indicate the time and place of publication or circulation, the nature of the request made, by whom and to whom the request was made, and by whom the request was acted upon and list the titles of each item published and circulated with the date of publication (day, month and year), and enclose copies of each such item listed with the verified reply.

37 INTERROGATORY (18)

(a) Is or was at any time the L.D.S. or any of its various lodges or branches a party to any lease-hold or any other real estate transaction or arrangement with the Communist Party—U.S.A. or any section, branch or club thereof, or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(b) If the answer to Interrogatory 18(a) is in the affirmative, set forth the parties to and the nature and terms of and the date or dates of the lease-hold or other such real estate transaction or arrangement.

(c) Has the L.D.S. or any of its various lodges or branches at any time permitted the Communist Party—U.S.A. or any section, branch or club thereof, or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835 the use of its meeting halls or other property for any purpose?

(d) If the answer to Interrogatory 18(c) is in the affirmative, state the type of use permitted, the time, place and premises involved, and parties arranging the use of such premises, the organization permitted such use, and the purpose for which the premises were used

INTERROGATORY (19)

(a) Did the L.D.S. or any of its various lodges or branches conduct, sponsor, or co-sponsor any celebration or celebrations in honor of the 25th anniversary of the Red Army?

(b) If the answer to Interrogatory 19(a) is in the affirmative, list the place and date of, and describe each such celebration.

INTERROGATORY (20)

(a) State any contact, dealing, communication or other connection, directly or indirectly, between the L.D.S. or its various lodges and branches or its officials or members and the American Lithuanian Workers Literary Association.

(b) Did the L.D.S. or any of its various lodges or branches ever co-sponsor any meetings, rallies, receptions, parties or other affairs or functions with the American Lithuanian Workers Literary Association?

(c) If the answer to Interrogatory 20(b) is in the affirmative, state whether the proceeds from any of these affairs or functions were ever shared with the Communist Party—U.S.A. the *Daily Worker*, or with any group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835.

38 (d) If the answer to Interrogatory 20(c) is in the affirmative, indicate the place, time and nature of the affairs or functions involved, the amount and source of proceeds shared with the Communist Party—U.S.A., the *Daily Worker*, or with any group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835, and by whom on behalf of the L.D.S. and with whom on behalf of the other organizations the arrangements for sharing the proceeds were made.

INTERROGATORY (21)

(a) Have any of those persons listed in answer to Interrogatories 4(b), 4(c), 4(d), 5(a), 6(a), 7(a), 15(c) and 16(d) at any time been employed by or worked for the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(b) If the answer to Interrogatory 21(a) is in the affirmative, list the names and addresses of all such persons, specifying the inclusive dates of employment by the Communist Party—U.S.A. or other groups officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835, of each such person, and describe the function or functions performed during such employment by each person listed.

INTERROGATORY (22)

(a) Has the L.D.S. or any of its various lodges or branches ever expressed the belief that the Soviet Union should control Lithuania?

(b) If the answer to Interrogatory 22(a) is in the affirmative, state the time, place and by whom and in what manner such beliefs were expressed.

INTERROGATORY (23)

(a) Did the Communist Party—U.S.A. or any of its officers or members at any time order, instruct or recommend that any person or group of persons join the L.D.S. or any of its various lodges or branches?

(b) Did the L.D.S. or any of its various lodges or branches or any of its officials or members at any time order, instruct or recommend that any person or group of persons join the Communist Party—U.S.A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(c) If the answer to Interrogatory 23(a) or 23(b) is in the affirmative, indicate the time and place that such orders, instructions or recommendations were made, by whom and to whom made, the content of such orders, instructions or recommendations and the manner in which such orders, instructions or recommendations were acted upon.

39 Your attention is hereby directed to Section 1001 of Title 18 of the United States Code which provides in part that whoever, in any matter within the jurisdiction of any department or agency of the United States, makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

For the Attorney General

WARREN OLNEY III
Assistant Attorney General

July 8, 1953.

Exhibit 5

40 Filed April 2, 1954

ASSOCIATION OF LITHUANIAN WORKERS
LIETUVIU DARBININKU SUSIVIENIJIMAS

110-04 Atlantic Avenue
Richmond Hill 19, N. Y.
Phone VIrginia 9-3692

September 8, 1953

Herbert Brownell, Jr., Esq.
Attorney General of the United States
Department of Justice
Washington, D. C.

Attention: Warren Olney III
Assistant Attorney General

Dear Sir:

We acknowledge receipt of your Statement of Grounds and Interrogatories on which it is proposed to designate the Association of Lithuanian Workers as coming within the purview of Executive Order No. 10450. They have been discussed at a meeting of the General Executive Board of this Association and we are writing you accordingly.

This Association is a fraternal benefit society chartered under Article 7 of the Insurance Law of the State of New York on November 5, 1930. It received its Certificate of Authority to do business from the Superintendent of Insurance of the State of New York on July 7, 1931, and since that time has carried on its business and affairs under the direct supervision of the Superintendent. It is licensed also to do business in several other states throughout the country.

Your basic charge, although expressed in the most general terms, is that the Association is carrying out the policies of the Communist Party.

The Association is not a political organization; it is not carrying out the policies of the Communist Party or of any other party.

The activities of the Association are confined strictly to those of a fraternal insurance beneficial society, as provided by its Charter and its Constitution and By-laws promulgated thereunder. In this connection, it may interest you to know that in January, 1951 the General Executive Board of the Association mailed the following advice to its lodges:

"Our Association, the LDS, is strictly a fraternal, insurance-beneficial organization. Therefore, our Lodges and Districts should act within those limits of ac-
41 tivity as stated in our Constitution. Our chief purpose—the furtherance of fraternalism."

This policy has been reaffirmed by the present General Executive Board of the Association.

The Insurance Department of the State of New York, pursuant to the Insurance Law of that state, periodically examines the records of the Association.

During all of the years of the Association's existence, neither the Insurance Department of the State of New York or of any other state where the Association is licensed to do business has had occasion to indicate that any of its activities is or was in violation of its Charter. The Association's activities have contributed measurably to the welfare and security of its thousands of members and their families.

Your rules and requirements make it impossible for the Association to have a hearing in regards to your proposed listing. For example, you would require the officers, under penalty of perjury, to furnish you with names and

addresses of all of its members and to indicate with respect to each and every one, what his political beliefs, affiliations and "sympathetic" associations" are or ever were. This requirement is, as you must know, impossible to meet. Yet your rules provide that we are not entitled to a hearing unless we first comply with this and other unconstitutional and impossible requirements. As the Association accepts as members persons without regard to their political, religious or social beliefs, we do not have any records of any political affiliations of our members. Therefore, it would be impossible for us to supply you with this information, even if the officers of the Association were prepared to violate its Constitution and By-laws and the non-political principles upon which it is founded.

In addition, your rules for the hearing allow you to make your determination solely on the basis of secret and confidential information which will not be disclosed to us. A proceeding based on such practice is not a hearing in any real or legal sense of the word.

The procedures you have adopted in this matter are unfair and undemocratic and contrary to the laws and traditions of this Nation.

42 In view of the foregoing, we respectfully request that you discontinue this proceeding against the Association. Should you persist in your avowed purpose to list it, the Association will have no alternative except to seek justice in the courts.

Very truly yours,

ASSOCIATION OF LITHUANIAN WORKERS

/s/ JOHN GASIUNAS
John Gasiunas
President

/s/ JOHN SIURBA
John Siurba
Secretary

Exhibit 6

43 Filed April 2, 1954

HAROLD I. CAMMER

Attorney At Law
9 East 40th Street
New York City

Murray Hill 3-6790

October 4, 1953

Herbert Brownell, Jr., Esq.
Attorney General of the United States
Department of Justice
Washington, D. C.

Attn: Warren Olney III
Assistant Attorney General

Re: Association of Lithuanian Workers

Dear Sir:

I have been retained as counsel to the Association of Lithuanian Workers, to whom you sent a notice of proposed designation under Executive Order No. 10450 on July 8, 1953. Your files should also show that on September 8, 1953, the Association wrote you in protest against the proposed designation.

An examination of the Interrogatories attached to your notice of July 8 discloses that aside from those numbered (1), (2) and (3), the Interrogatories are improper in that they are impossible to answer or in that they call for information which it is improper for you to attempt to elicit. For example, the Association does not have the information relating to political beliefs or affiliations called for by Interrogatory (5), (b) and (c), Interrogatory (6), (b) and (c), Interrogatory (7), (c) and (d), and other of the Interrogatories. Aside from this, the Inter-

rogatories violate the First and Fifth Amendments to the Constitution.

So that there may be no misunderstanding, I am writing to advise that the Association desires a hearing pursuant to Title 28, Chapter I, Part 41, Section 41.1 et seq. of the Code of Federal Regulations but does not believe
44 that such a hearing should be conditioned upon responses to Interrogatories (4) to (23), inclusive, and further believes that such a hearing should conform to the requirements of due process, including the right to examine and cross-examine all witnesses.

I would appreciate it if you would consider this as a motion for the withdrawal of the Interrogatories, except Interrogatories (1), (2) and (3) and as a request for a hearing on the Statement of Grounds at which the Association may be advised of the witnesses and testimony against it, have the opportunity to cross-examine such witnesses and to produce evidence in its own behalf. I do not believe that a proceeding at which there is received ex parte evidence, not disclosed to the Association nor subject to cross examination, would constitute a hearing.

Very truly yours,

/s/ Harold I. Cammer

Exhibit 7

45 Filed April 2, 1954

November 25, 1953

Harold I. Cammer, Esquire
9 East 40th Street
New York, New York

Dear Mr. Cammer:

Reference is made to your letter of October 4, 1953, in which you state that you have been retained as counsel

to the Association of Lithuanian Workers. In your letter you request that all interrogatories except interrogatories 1, 2 and 3 be withdrawn and that a hearing be granted to the organization which you represent.

The statement of grounds and interrogatories with respect thereto were forwarded to the Association of Lithuanian Workers and received by it on July 13, 1953. On September 8, 1953, the Association advised the Department that it rejected the hearing provided for under the rules promulgated by the Attorney General in connection with the designation of organizations under Executive Order No. 10450. Your letter of October 4, 1953, was not filed within the sixty day period provided for in the rules. In addition, the request for a hearing contained in your letter was not signed by the executive officers of the Association. Therefore your request for hearing is both not in time and not in proper form.

For your information I am enclosing herewith a copy of the rules promulgated by the Attorney General. You will note that Section 41.3 provides that failure of the organization to file a reply within the sixty days provided therefor shall constitute an acquiescence in designation.

Sincerely,

WARREN OLNEY III
Assistant Attorney General
Criminal Division

Enclosure No. 116785

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46 Filed May 16, 1955

Motion by Defendant for Judgment on the Pleadings, or, in the Alternative, for Summary Judgment

Now comes defendant in the above-entitled action, and upon the complaint, answer and exhibits made a part thereof, moves this Court for judgment on the pleadings,

or, in the alternative, for summary judgment on the ground that there is no genuine issue as to any material fact and defendant is entitled to judgment as a matter of law.

In support of this motion, the Court is respectfully referred to defendant's accompanying memorandum of points and authorities.

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48 Filed August 11, 1955

Order

This cause having come on for hearing upon defendant's motion for judgment on the pleadings, or in the alternative, for summary judgment, and the Court having considered the pleadings, the memorandum submitted by counsel, and the arguments of counsel; it is by the Court, this 11th day of August, 1955,

ADJUDGED, ORDERED and DECREED, that:

The motion of the defendant for judgment on the pleadings be, and the same is hereby granted, and judgment is hereby entered for the defendant.

/s/ BURNITA SHELTON MATTHEWS
Judge

FILED
JUL 19 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 295

ASSOCIATION OF LITHUANIAN WORKERS

and

AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION, INC., *Petitioners*,

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

JOSEPH FORER
DAVID REIN
711 Fourteenth St. N. W.,
Washington, D. C.
Attorneys for Petitioners

NATHAN WITT
P.O. Box 156
Ansonia Station,
New York, N. Y.
Attorney for Association of Lithuanian Workers

I. G. NEEDLEMAN
165 Broadway,
New York, N. Y.
Attorney for American Lithuanian Literary Association

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

ASSOCIATION OF LITHUANIAN WORKERS

and

AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION, INC., *Petitioners,*

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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Association of Lithuanian Workers and American Lithuanian Workers Literary Association, Inc.[1] petition for a writ of certiorari to review a judgment of the United States Court of Appeals for the District of

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[1] The petitioners are hereafter referred to as the Workers Association and the Literary Association respectively. The record in the Workers Association case is referred to as W. R., and that in the Literary Association case as L. R.

Columbia Circuit which affirmed judgments entered against petitioners by the United States District Court for the District of Columbia in suits brought by petitioners to enjoin the Attorney General from continuing to designate them as organizations within the purview of Executive Orders 10450 and 9835.

The court below consolidated the two cases for purposes of argument and opinion. Since the cases involve identical or closely related questions, a single petition is filed under this Court's Rule 23(5).

OPINION BELOW

The opinion of the court below has not yet been reported. It and the opinion of Judge Prettyman, dissenting as to the Association of Lithuanian Workers, appear in Appendix B, *infra*.

JURISDICTION

The judgment of the Court of Appeals was entered on May 9, 1957 (W. R. 57; L. R. 45; Appendix B, *infra*). Jurisdiction of this Court exists under 28 U. S. Code 1254.

QUESTIONS PRESENTED

1. Whether the provisions of Executive Orders 9835 and 10450 authorizing the Attorney General to designate, for the purposes of the government employees security program, organizations as totalitarian, fascist, communist, subversive, etc., are constitutional on their face or as applied to petitioners, who have been designated under the Executive Orders.

2. Whether the Attorney General could, consistently with the Constitution, the Administrative Procedure

Act, and the Executive Orders, deny petitioners a hearing before designating them unless they replied "completely and with particularity" to interrogatories which were impossible so to answer, and which were irrelevant, burdensome, and invasive of privacy.

3. Whether petitioners, having been designated without a hearing, were precluded from obtaining judicial review of the propriety of the designation, because they did not exhaust "administrative remedies" in that they failed to reply to interrogatories which they protested and which were irrelevant, burdensome, invasive of privacy, and impossible to answer.

4. Whether the regulations of the Attorney General prescribing procedures for designating organizations violate, on their face or as applied to petitioners, the Constitution, the Administrative Procedure Act, or the Executive Orders.

EXECUTIVE ORDERS AND REGULATIONS INVOLVED

The pertinent provisions of Executive Orders 9835 and 10450 and of the Attorney General's Rules of Procedure are set forth in Appendix A, *infra*.

STATEMENT OF THE CASE

On January 22, 1954, the Attorney General designated each petitioner without hearing as an organization "within the purview of" Executive Orders 10450 and 9835 (W. R. 9, 19; L. R. 5, 13). These Orders require the Attorney General to furnish to the various federal agencies, for use in the administration of the government employees' security program, the names of organizations designated by him, "after appropriate investigation and determination," "as totalitarian,

fascist, communist or subversive or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means." Under the Executive Orders, membership in, or affiliation or sympathetic association with, an organization so designated by the Attorney General, adversely affects a person's eligibility for federal employment. (See Appendix A, *infra.*)

Each petitioner sued in the District Court to enjoin the Attorney General from continuing the designation. Each complaint alleged that the designation was unfounded in fact and arbitrary; that the designation provisions of the Executive Orders are unconstitutional; and that the designation was made in a manner which offended due process and the Administrative Procedure Act. Each complaint also alleged that the designation was injuring the organization's reputation, revenue and functions, and thereby threatening to destroy it. (W. R. 2-12; L. R. 2-7.)

The Attorney General filed answers in which "upon information and belief" he made allegations to the effect that each petitioner was a front for the Communist Party. (W. R. 13-14; L. R. 8-10). The answers also asserted that judicial relief was precluded by failure of each organization to "avail itself of the opportunity to obtain a full administrative hearing" (W. R. 19; L. R. 13). Attached to each answer as exhibits were copies of correspondence which had passed between the petitioner involved and the Department of Justice (W. R. 21-44; L. R. 14-32).

In each case the Attorney General moved for judgment on the pleadings (W. R. 44-45; L. R. 32), which consisted solely of the complaint and the answer, including the exhibits to the answer. The District Court granted the motions without stating grounds (W. R. 45; L. R. 33). The Court of Appeals affirmed, with Judge Prettyman dissenting in the Workers Association case.

The facts which appear from the pleadings are as follows.

The Workers Association Case

The Workers Association is a fraternal benefit society, incorporated under the laws of the State of New York. It has the corporate purposes of benefiting culturally, educationally and economically persons of Lithuanian descent. It conducts a non-profit insurance program for its members, operating under certificates of authority first received in 1930 under the New York Insurance Law. It functions under the lodge system, as defined in section 451 of the New York Insurance Law, and has 167 lodges in 18 states, in nine of which it is duly licensed and in nine of which it is permitted to maintain lodges without license. It has about 7,000 members. The face value of the life insurance alone presently carried with it by its membership amounts to more than $3,000,000. It also provides other types of insurance for its members. It arranges for lectures to its members, distributes pamphlets and articles on health subjects, and conducts occasional recreational and sporting events for its members. (W. R. 2-5.)

On April 29, 1953, the Assistant Attorney General wrote the Workers Association that the Attorney Gen-

eral proposed to designate it under the Executive Orders (W. R. 21). The Workers Association replied that it desired to contest the designation (W. R. 22). Under section 41.1(b) of the Attorney General's regulations (quoted in Appendix A, *infra*), this was the first step necessary to avoid a designation without further proceedings.

In accordance with section 41.2 of the Attorney General's regulations, an Assistant Attorney General thereupon sent to the Workers Association, under date of July 8, 1953, a statement of the grounds upon which the designation was proposed to be made and a set of interrogatories (W. R. 23-38). Section 41.3 of the regulations gives an accused organization sixty days within which to file a verified reply, signed by its executive officers. This section of the regulations also provides:

> "The reply shall answer each interrogatory completely and with particularity and shall be limited to statements of fact.[2] The organization may also submit supporting affidavits with its reply. Failure to answer any interrogatory or any part thereof shall be deemed an admission of the truth of the facts to which such interrogatory or part thereof refers. The submission of an evasive reply to any interrogatory or any part thereof shall likewise be deemed an admission of the facts to which such interrogatory or part thereof refers. Failure of the organization to file a reply within the sixty days provided therefor shall constitute an acquiescence in the designation."

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[2] It does not appear from the regulations that the organization is also required to reply "completely and with particularity" to the statement of the grounds for the proposed designation.

The regulations contain no provision authorizing the accused organization to serve interrogatories upon the Attorney General.

Section 41.4 of the Attorney General's regulations provides that an organization "filing a reply as provided in this Part may accompany its reply with a written request for a hearing." If this is done, the Attorney General may assign to conduct the hearing "such officer or board as he shall deem necessary" (sec. 41.7). Under section 41.8, however, the hearing officer may conduct the proceeding without the taking of evidence, if such a course appears appropriate to him "upon the basis of the statement, interrogatories, reply and affidavits (if any) submitted as provided in this Part." At this hearing, the statement of grounds constitutes evidence against the organization, section 41.8(b) authorizing the Attorney General to rely upon the statement. There is no provision making the organization's reply evidence for the organization. The Attorney General may also use as evidence against the organization information from undisclosed persons not subject to cross examination, section 41.8(i) authorizing the hearing officer "to receive as evidence on behalf of the Attorney General information or documentary material, in summary form or otherwise, without requiring disclosure of classified security information or the identity of confidential informants." Section 41.8(j) provides that witnesses shall be subject to cross-examination, "provided that no witness on behalf of the Government shall be required to disclose classified security information or the identity of confidential informants."

The statement of grounds served upon the Workers Association consisted of vague, conclusory and un-

particularized charges to the effect that the Workers Association promotes unstated Communist Party policies (W. R. 23-26). For example, the statement included allegations that the Workers Association:

> "has constituted a vehicle to further the aims, policies and objectives of the Communist Party—U. S. A., operating at all times as an instrument to promote affairs and functions designed to publicize and implement policies of the Communist Party—U. S. A." (W. R. 24);
>
> "has conducted, sponsored and co-sponsored and caused to be conducted, sponsored and co-sponsored receptions, parties, meetings and similar events for the purpose of carrying out the policies of the Communist Party—U. S. A." (W. R. 25);
>
> "has published and circulated and caused to be published and circulated, three newspapers, namely TIESA, VILNIS, and LAISVE which have consistently supported and implemented policies, aims and objectives of the Communist Party—U. S. A." (W. R. 25);
>
> "has never knowingly deviated in its program and objectives from the program and objectives of the Communist Party—U. S. A." (W. R. 25-26).

The interrogatories served upon the Workers Association were twenty-three in number, each containing several inquiries demanding numerous items of information (W. R. 26-38).

The complaint alleged (W. R. 7-8) that the "interrogatories would require the plaintiff to furnish an immense mass of detailed information and data, much of it obscurely defined, much of it patently unavailable to plaintiff and unobtainable, and virtually all of it of no possible relevance. It would entail a huge and

expensive burden for plaintiff to obtain and compile so much of the information requested as is possible to obtain. The thrust and effect of the statement of grounds and interrogatories are to make it impossible for plaintiff to answer the statement and interrogatories, and to lay an artificial foundation for the defendant to hold plaintiff in default and deny it the hearing which the defendant's regulations purport to make available." Since judgment was granted on the pleadings, the Workers Association was, of course, precluded from introducing evidence to support these allegations. However, a mere inspection of the interrogtories will show that they are of a sort which would have been produced by a draughtsman deliberately seeking to ask questions which could not possibly be answered because they sought information which the organization could not have or get and because they were vague to the point of unintelligibility. Inspection will also show that the interrogatories grossly invade privacy, search into opinions and publications, and assume the organization's guilt. We quote a few of the interrogatories as illustrations, noting that "L. D. S." refers to the Workers Association:

"INTERROGATORY (6)

(a) List the names and addresses of all those persons who are presently members of the L. D. S.

(b) Have any of those persons listed in answer to Interrogatory 6(a) at any time been

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U. S. A. or any other group officially designated by the Attorney General pursuant to Executive Orders 1040 and 9835?

(c) If the answer to Interrogatory 6(b) or any part thereof is in the affirmative, list the names and addresses of all such persons and indicate the periods during which they were

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U. S. A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835 (W. R. 28-29.)[3]

"INTERROGATORY (7)

(a) List the names and addresses of persons who have, at any time, been engaged or invited to speak or to appear as guests by the L. D. S. and its various lodges and branches or by officials or members of the L. D. S. and its various lodges and branches at any meetings, conventions or other functions that were conducted, sponsored or co-sponsored by the L. D. S. or any of its various lodges or branches.

(b) State as to each such person listed, the date and location of the affair to which invited or engaged to speak or appear as a guest.

(c) Have any of those persons listed in answer to Interrogatory 7(a) at any time been

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U. S. A. or any other group

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[3] As to this interrogatory, Judge Prettyman commented in his dissenting opinion (W. R. 53): "There are some 7,000 members of the Workers, and there are some 250 organizations on the Attorney General's list. It was impossible for anyone to say under oath whether any of 7,000 members had ever at any time been sympathetically associated with any one of 250 organizations."

officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?

(d) If the answer to Interrogatory 7(c) or any part thereof is in the affirmative, list the names and addresses of all such persons and indicate the periods of time during which they were

i. members of
ii. affiliated with
iii. sympathetically associated with

the Communist Party—U. S. A. or any other group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835. (W. R. 29-30.)[4]

"INTERROGATORY (8)

(a) Has the L. D. S. or any of its various lodges or branches or its officials or members at any time published or circulated or caused to be published or circulated articles, pamphlets, leaflets, newsletters or other printed material?

(b) If the answer to Interrogatory 8(a) is in the affirmative, list the title of each particular item, the date of publication (day, month and year) and enclose copies of each such item listed with the verified reply (W. R. 30.)

"INTERROGATORY (9)

(a) Has the L. D. S. or any of its various lodges and branches, at any time, knowingly deviated in any manner whatsoever from the policies and program of the Communist Party—U. S. A., its leaders and members?

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[4] As to this interrogatory Judge Prettyman commented in his dissent (W.R. 54): "There are 167 lodges in the Association. Nobody, I venture to assert, could list all the persons invited to speak or to appear as guests at every meeting for twenty-three years of all of 167 lodges by any and all of 7,000 members."

(b) If the answer to Interrogatory 9(a) is in the affirmative, state the particular points and time of any such deviations. (W. R. 30-31.)

"INTERROGATORY (13)

(a) Have the newspapers *The Worker* and the *Daily Worker* at any time given publicity coverage to the L. D. S. or any of its various lodges and branches?

(b) If the answer to Interrogatory 13(a) is in the affirmative, specify the newspaper and edition, date and page number where the L. D. S. or any of its various lodges and branches are mentioned. (W. R. 32.)

"INTERROGATORY (20)

(a) State any contact, dealing, communication or other connection, directly or indirectly, between the L. D. S. or its various lodges and branches or its officials or members and the American Lithuanian Workers Literary Association. (W. R. 36.)

"INTERROGATORY (23)

(a) Did the Communist Party—U. S. A. or any of its officers or members at any time order, instruct or recommend that any person or group of persons join the L. D. S. or any of its various lodges or branches?

* * * * *

(c) If the answer to Interrogatory 23(a) or 23(b) is in the affirmative, indicate the time and place that such orders, instructions or recommendations were made, by whom and to whom made, the content of such orders, instructions or recommendations and the manner in which such orders, instructions or recommendations were acted upon." (W. R. 37-38.)

The Interrogatories concluded by directing attention to the criminal penalties for the making of false statements to a government agency (W. R. 38).

On September 8, 1953, within the sixty-day period for reply, the Workers Association wrote the Attorney General over the signatures of its president and secretary (W. R. 39-41). This letter denied the charges made in the statement of grounds, protested that the interrogatories were impossible to answer and thus deprived the Association of a hearing, and objected to the Attorney General's hearing rules because they allowed him to make his determination "on the basis of secret and confidential information which will not be disclosed to us." The letter stated (*ibid.*):

> "This Association is a fraternal benefit society chartered under Article 7 of the Insurance Law of the State of New York on November 5, 1930. It received its Certificate of Authority to do business from the Superintendent of Insurance of the State of New York on July 7, 1931, and since that time has carried on its business and affairs under the direct supervision of the Superintendent. It is licensed also to do business in several other states throughout the country.
>
> "Your basic charge, although expressed in the most general terms, is that the Association is carrying out the policies of the Communist Party.
>
> "The Association is not a political organization; it is not carrying out the policies of the Communist Party or of any other party.
>
> "The activities of the Association are confined strictly to those of a fraternal insurance beneficial society, as provided by its Charter and its Constitution and By-laws promulgated thereunder.
>
> * * * * *

"During all of the years of the Association's existence, neither the Insurance Department of the State of New York or of any other state where the Association is licensed to do business has had occasion to indicate that any of its activities is or was in violation of its Charter. The Association's activities have contributed measurably to the welfare and security of its thousands of members and their families.

"Your rules and requirements make it impossible for the Association to have a hearing in regards to your proposed listing. For example, you would require the officers, under penalty of perjury, to furnish you with names and addresses of all of its members and to indicate with respect to each and every one, what his political beliefs, affiliations and 'sympathetic associations' are or ever were. This requirement is, as you must know, impossible to meet. Yet your rules provide that we are not entitled to a hearing unless we first comply with this and other unconstitutional and impossible requirements. As the Association accepts as members persons without regard to their political, religious or social beliefs, we do not have any records of any political affiliations of our members. Therefore, it would be impossible for us to supply you with this information, even if the officers of the Association were prepared to violate its Constitution and By-laws and the non-political principles upon which it is founded.

"In addition, your rules for the hearing allow you to make your determination solely on the basis of secret and confidential information which will not be disclosed to us. A proceeding based on such practice is not a hearing in any real or legal sense of the word.

"The procedures you have adopted in this matter are unfair and undemocratic and contrary to the laws and traditions of this Nation.

"In view of the foregoing, we respectfully request that you discontinue this proceeding against the Association. Should you persist in your avowed purpose to list it, the Association will have no alternative except to seek justice in the courts."

The Attorney General did not reply to this letter (W. R. 8).

Thereafter, the Workers Association retained counsel (W. R. 8, 42). On October 4, 1953 counsel wrote the Attorney General notifying him that he had been retained (W. R. 42). He also stated in his letter (W. R. 42-43):

"An examination of the Interrogatories attached to your notice of July 8 discloses that aside from those numbered (1), (2) and (3), the Interrogatories are improper in that they are impossible to answer or in that they call for information which it is improper for you to attempt to elicit. For example, the Association does not have the information relating to political beliefs or affiliations called for by Interrogatory (5), (b) and (c), Interrogatory (6), (b) and (c), Interrogatory (7), (c) and (d), and other of the Interrogatories. Aside from this, the Interrogatories violate the First and Fifth Amendments to the Constitution.

"So that there may be no misunderstanding, I am writing to advise that the Association desires a hearing pursuant to Title 28, Chapter I, Part 41, Section 41.1 et seq. of the Code of Federal Regulations but does not believe that such a hearing should be conditioned upon responses to Interrogatories (4) to (23), inclusive, and further believes that such a hearing should conform to the requirements of due process, including the right to examine and cross-examine all witnesses.

"I would appreciate it if you would consider this as a motion for the withdrawal of the Interrogatories, except Interrogatories (1), (2) and (3) and as a request for a hearing on the Statement of Grounds at which the Association may be advised of the witnesses and testimony against it, have the opportunity to cross-examine such witnesses and to produce evidence in its own behalf. I do not believe that a proceeding at which there is received ex parte evidence, not disclosed to the Association nor subject to cross examination, would constitute a hearing."

To this letter the Assistant Attorney General replied on November 25, 1953 (W. R. 43-44):

"The statement of grounds and interrogatories with respect thereto were forwarded to the Association of Lithuanian Workers and received by it on July 13, 1953. On September 8, 1953, the Association advised the Department that it rejected the hearing provided for under the rules promulgated by the Attorney General in connection with the designation of organizations under Executive Order No. 10450. Your letter of October 4, 1953, was not filed within the sixty day period provided for in the rules. In addition, the request for a hearing contained in your letter was not signed by the executive officers of the Association. Therefore your request for hearing is both not in time and not in proper form.

"For your information I am enclosing herewith a copy of the rules promulgated by the Attorney General. You will note that Section 41.3 provides that failure of the organization to file a reply within the sixty days provided therefor shall constitute an acquiescence in designation."

As the complaint alleges (W. R. 9) and the answer admits (W. R. 19), on December 4, 1953, counsel for

the Workers Association replied to the Assistant Attorney General, pointing out that (contrary to the Assistant Attorney General's assertion) the organization's letter of September 8, 1953, did not reject a hearing, and renewing his request for the withdrawal of the interrogatories (other than the first three) and for a hearing. The Department of Justice never answered this letter (W. R. 9, 19). Instead, on January 22, 1954, the Attorney General, without any further communication with the Workers Association or its counsel and without hearing, summarily designated the Workers Association as an organization within the purview of the Executive Orders, on the grounds that it had failed to answer "each interrogatory completely and with particularity" (19 Fed. Reg. 655; W. R. 9).

In affirming the judgment entered on the pleadings in favor of the Attorney General, the majority below (Judges Wilbur K. Miller and Danaher) held (W. R. 50) that judicial review of the propriety of the designation was precluded because the Workers Association "did not reply to or challenge the interrogatories before the administrative body which would have entitled it to a hearing," and, "This was clearly a refusal to utilize the administrative process."

The fact is, of course, that, contrary to this holding, the Workers Association had, within the time allowed to answer, challenged the interrogatories by its letter of September 8, 1953, quoted *supra*, pp. 13-15. The interrogatories were also challenged by the later communications of its counsel, sent before the designation was made. The majority opinion itself noticed the fact that in the September 8, 1953 letter the Workers Association "wrote to the Attorney General asserting its

innocence, *complaining that the interrogatories were impossible to answer, and attacking the hearing procedure as 'unfair and democratic and contrary to the laws and traditions of this Nation.'*" (W. R. 48, emphasis supplied).

In the court below, the Workers Association had argued that so far from refusing an administrative hearing, it had been denied one by being required, as a condition to obtaining a hearing, to answer "completely and with particularity" interrogatories which were illegal and impossible so to answer, and which it had protested. The majority below rejected this contention without, however, examining the interrogatories. Its thesis seems to have been that the organizatjon's protest (which the Attorney General never answered) that the interrogatories were impossible to answer and that the Attorney General's procedures were unfair and illegal, did not "challenge the interrogatories" because the Workers Association did not also ask that the impossible and illegal interrogatories be withdrawn or changed. The majority below viewed the organization's protests as acts of recalcitrance, particularly because the organization had said that if it were listed it would "seek justice in the courts."

That such was the reasoning of the majority below appears from the following passages from its opinion (W. R. 48, 50):

> " . . . under date of September 8, 1953, [the Workers Association] wrote to the Attorney General asserting its innocence, complaining that the interrogatories were impossible to answer, and attacking the hearing procedure as 'unfair and undemocratic and contrary to the laws and traditions of this Nation.' The Association did not

ask that the interrogatories be modified or withdrawn, nor did it seek a conference or hearing concerning them. Having decided for itself that both the interrogatories and the prescribed hearing procedure were improper and unacceptable, the Association washed its hands of the whole matter and issued an ultimatum to the Attorney General in the closing paragraph of its letter, which we quote: 'In view of the foregoing, we respectfully request that you discontinue this proceeding against the Association. Should you persist in your avowed purpose to list it, the Association will have no alternative except to seek justice in the courts.'

* * * *

"As we have seen, the [Workers Association] did not reply to or challenge the interrogatories before the administrative body, which would have entitled it to a hearing. Instead, it notified the Attorney General that he must withdraw the designation proceeding or be faced with litigation. This was clearly a refusal to utilize the administrative process, and precludes judicial review of the grounds for and the propriety of designation."

The Workers Association had also argued that "even a rejection of the administrative remedy would not bar judicial determination *after designation* of whether the designation was made by an invalid procedure and whether the designation power is unconstitutional." The majority ruled as to these points that the designation provisions of the Executive Orders and the Attorney General's procedures thereunder were valid. (W. R. 51)

Judge Prettyman dissented on the grounds that, "The Workers were not proffered due process and they adequately tried to obtain valid consideration

from the administrative agency" (W. R. 52). He pointed out that the regulations required that each interrogatory be answered "completely and with particularity" as a condition to obtaining, or even requesting, a hearing (W. R. 52). He analyzed the interrogatories and concluded that this condition could not be met because, "Many of the interrogatories were impossible—not merely difficult but impossible—to answer completely and with particularity" (W. R. 53). He stated further (W. R. 54): "A reading of all of the interrogatories as they appear in the record will demonstrate my point beyond peradventure of doubt. They were impossible to answer." Judge Prettyman also held that the Workers Association's letter of September 8, 1953 had been a timely statement of objections to the interrogatories (W. R. 54-55). He stated also (W. R. 55): "In response to the charges forwarded to them, as distinguished from the interrogatories, the Workers' letter of September 8th made clear and careful response, categorically denying the purport of the involved charges and affirmatively asserting the activities to which the Association is 'confined strictly.'" Judge Prettyman also stated (W. R. 56) that he had "considerable doubt as to the validity of parts" of the Attorney General's regulations, particularly the provision that failure to answer an interrogatory or an evasive reply would "be deemed an admission of the facts to which such interrogatory or part thereof refers."

The Literary Association Case

The Literary Association is a non-profit organization incorporated under the laws of New Jersey, Pennsylvania, Illinois, Connecticut, Michigan and New York.

It has 97 branches in 18 states, and its activities are largely carried on by and through these branches (L. R. 2-3). Its purposes and activities, as described in the complaint, are as follows (L. R. 2-3):

> "To publish writings, papers, books, pamphlets, newspapers, periodicals and other publications in various branches of learning; to establish libraries; arrange literary programs, and theatrical entertainments; to work for the intellectual, moral and social advancement of the members; all without pecuniary profit. All of these purposes are carried out by [it], with particular application to promoting the cultural and social advancement of persons in the United States of Lithuanian origin or descent. [It] publishes books and a literary quarterly, sponsors meetings and lectures on topics of art, literature, current events, etc., and sponsors handicraft exhibits, plays, and various other cultural and social affairs."

On April 29, 1953, the Assistant Attorney General wrote the Literary Association that the Attorney General proposed to designate it under the Executive Orders (L. R. 14). On May 21, 1953, the Literary Association replied that it desired to contest the designation (L. R. 15).

On July 23, 1953, the Assistant Attorney General sent the Literary Association a statement of the grounds upon which the designation was proposed and a set of interrogatories (L. R. 16-29). The statement of grounds, like that described in the Workers Association case, consisted of generalized and vague charges to the effect that the Literary Association is under Communist influences and advances Communist Party policies. Like the Workers Association, the Literary Association was charged with being a Communist Party

"vehicle" (L. R. 16) and with having "never knowingly deviated" from the policies of the Communist Party (L. R. 18).

The interrogatories served on the Lithuanian Association (L. R. 18-19), though somewhat more restrained than those served on the Workers Association, demanded great masses of information, much of which the organization could not be expected to have or be able to obtain, and invaded organizational privacy, showed a desire to examine the organization's publications, and were in many instances vague. They demanded the names and addresses of all past and present members of the Literary Association (Interrogatory 33, L. R. 28) and of all persons who had ever been asked to speak at any meetings or functions of the organization and its branches (Interrogatory 27, L. R. 26). Although the Literary Association has never inquired into the politics of its members (L. R. 30), no less that fourteen of the interrogatories inquired whether persons were ever members of the Communist Party (Interrogatories 2, 6, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 27, 38).

On September 23, 1953, the Literary Association sent the Attorney General its reply to the charges and interrogatories, signed and verified by its president and secretary (L. R. 11, 30-32). The reply read as follows (L. R. 30-31):

> "American Lithuanian Workers' Literary Association, Inc., hereinafter referred to as ALWLA, replying to the Statement of Grounds and Interrogatories propounded to it respectfully alleges:
>
> "1. Admits that the ALWLA was incorporated on June 8, 1932, under the laws of the State of New York.

"2. As to the other Statement of Grounds and Interrogatories the ALWLA states that it has always abided by the terms of its Certificate of Incorporation and has consistently adhered to its purpose of publishing writings, papers, books, pamphlets and periodicals and has carried on associated literary activity such as establishing libraries, arranging theatrical and literary programs and in general, working for intellectual, social and moral advancement of its members. In all this work the association at no time ever inquired into the politics or religion of its members. In all of its long and glorious existence, the ALWLA never had any trouble or misunderstanding with the Government of the United States or with any of its institutions. We wish to state that ALWLA was the first and only organization in the United States to translate fully, publish widely and distribute among the Lithuanians in this country the U. S. Constitution and Declaration of Independence, as well as short biographies of Washington, Jefferson, Franklin, Andrew Jackson, Abraham Lincoln and other great Americans.

"3. In view of the nature of its activity as set forth in its Certificate of Incorporation and as consistently carried out by the organization, the ALWLA asserts that its activities do not come within the provisions of Executive Order 10450. It further specifically asserts that under the Constitution of the United States and particularly under the First Amendment thereto, the Attorney General is without power to inquire into the writings and publishings of the ALWLA and has no authority therefore to make the proposed listing.

"4. The alleged authority given to the Attorney General under Executive Order 10450 and the Regulations of the Attorney General as attempted to be applied to this organization is neither expressly nor impliedly authorized by the United States Constitution and is violative of the pro-

visions not only of the First Amendment, but also of the Fifth, Ninth and Tenth Amendments to the U. S. Constitution:

"Specifically, proper standards are not set forth in the Executive Order and in the regulations promulgated by the Attorney General; the so-called standards are vague, indefinite and without clear meaning, and the Regulations perpetuate the uncertainty.

"The proceedings should be dismissed."

On January 22, 1954, the Attorney General, without further communication with the Literary Association and without hearing, summarily designated it as an organization within the purview of the Executive Orders on the grounds that it had failed to answer "each interrogatory completely and with particularity" (19 Fed. Reg. 655; L. R. 12, 3).

The court below affirmed the judgment in favor of the Attorney General on the ground that the Literary Association's reply "was not a response to the Attorney General's statement of grounds and interrogatories, but a demand for dismissal on pleas of innocence and unconstitutionality. Having failed to reply, the Association cannot obtain judicial relief from designation." (L. R. 39-40).

Judge Prettyman concurred in the result as to the Literary Association on the ground that the organization "failed to make to the Attorney General an objection to the proffered procedure with sufficient specificity to enable him to pass upon the challenge. It merely asserted that the whole proceeding was unconstitutional." (L. R. 40.) Judge Prettyman thereby appears to have overlooked or to have regarded as in-

sufficient the facts that the Literary Association's reply (1) stated that it had never inquired into the politics of its members, thereby showing that it could not answer the numerous interrogatories on that subject, and (2) asserted that under the Constitution the Attorney General "is without power to inquire into the writings and publishings" of the organization, thereby indicating a protest against at least six of the interrogatories (numbers 20, 21, 22, 31, 36, 38, L. R. 24-29).

REASONS FOR GRANTING THE WRIT

This case presents substantial and important questions concerning the constitutionality of the Attorney General's claimed power to list organizations as "subversive," the validity of his listing procedures, and the responsibility of the federal courts when called upon to review a listing. We discuss these subjects in reverse order.

1. The Attorney General has defamed petitioners by designating them as organizations within Executive Orders 9835 and 10450, thereby injuring their reputations, property, and First Amendment freedoms. This blacklisting was done without a hearing. Petitioners were defaulted because they failed to answer interrogatories which were impossible to answer and which sought to invade their privacy, and because they protested the interrogatories and the Attorney General's assertion of a right to condemn them on secret accusations.

When petitioners applied to the federal courts, they were denied an opportunity to prove that the designations were baseless, because they had not complied with the Attorney General's unfair and impossible

conditions. The court below made this ruling without even considering whether the conditions were unreasonable or illegal, and in face of the fact that the petitioners had made protests, to which the Attorney General had not replied, against the conditions. Moreover, the court below took the peculiar view that an organization's assertion that it would, if necessary, "seek justice in the courts" was an "ultimatum" warranting denial of access to the courts.

Joint Anti-Fascist Refugee Committee v. *McGrath*, 341 U. S. 123, held that an organization designated by the Attorney General is entitled to judicial review of the propriety of the designation. The court below has nullified this right by conditioning it upon compliance with impossible and illegal conditions of the Attorney General.

Certiorari should be granted in this case in the interests of the fastidious administration of justice, and to preserve for all organizations the right of judicial review established by the *Anti-Fascist* case.

2. Prior to the *Anti-Fascist* decision, the Attorney General claimed the right to designate organizations without notice or hearing. His present regulations purport to allow hearings for accused organizations. The fact is, however, that of the some 250 organizations currently designated by the Attorney General, including those which were first designated after the promulgation of the present regulations, not one received a hearing before designation, and there has been only one hearing after designation.[5] Also, on the

[5] This was a single hearing (in which the examiner's report has not yet been issued) for three allied organizations which had already been designated—the Independent Socialist League, its pre-

same day that petitioners were designated, 17 other organizations which had expressed a desire to contest proposed designations were designated without hearings for failure to reply "completely and with particularity" to interrogatories served on them by the Attorney General. 19 Fed. Reg. 655.

This case explains the absence of hearings. It shows that the Attorney General's regulations are devised and administered so as to deny the hearings which are promised on paper. It shows that a hearing is obtainable under the Attorney General's regulations only if the accused organization answers "completely and with particularity" interrogatories which are impossible so to answer because they are extravagantly vague and call for information which the organization does not have and cannot obtain. Those portions of the interrogatories which can be answered require the organization to submit to a burdensome and irrelevant inquisition which grossly invades the right of privacy.

The *Anti-Fascist* case did not decide whether due process requires an administrative hearing before organizations may be designated by the Attorney General. However, four members of the Court—Justices Black, Frankfurter, Douglas, and Jackson—expressed the opinion that a hearing was required by the Constitution.

In the present case, the Attorney General denied petitioners a hearing by the offensive device of conditioning a hearing on impossible terms. Moreover, if

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decessor, the Workers Party, and its youth group, the Socialist Youth League. It took the League at least six years of effort after its designation to obtain this hearing. See Chafee, *The Blessings of Liberty*, p. 28.

a hearing is constitutionally required, the Attorney General's regulations may not validly condition its availability on the making of responses to interrogation. Cf. *Coe* v. *Armour Fertilizer Works,* 237 U. S. 413, 424-425. The conditions prescribed by the Attorney General's regulations are particularly objectionable because no limitations are placed on the scope and nature of the interrogatories which must be answered, and because, as this case illustrates, an objection to the interrogatories is treated as a default. Thus the Attorney General may, as he did here, condition the availability of a hearing on submission to a burdensome, irrelevant, and obnoxious inquisition.

This case demonstrates that the Attorney General is using the threat of defamation without hearing to coerce private organizations to investigate the affiliations of their members and other persons and to inform on them to the Department of Justice. Whatever may be the power of the federal government to investigate and screen its employees for loyalty and security reasons, it has no power under the Constitution to compel private organizations to become political investigators and informers for the Department of Justice. To defame petitioners for failing to answer the interrogatories was, therefore, an unconstitutional procedure.

If an organization manages to answer the Attorney General's interrogatories, it receives a hearing in which it has the burden of proof; the Attorney General's charges are evidence against it; the Attorney General may rely on the secret testimony of faceless informers; and the hearing examiner is not insulated from agency pressures. (See *supra,* p. 7.)

Certiorari should be granted in this case so that the Court may determine whether the petitioners were denied procedural due process, whether accused organizations are entitled to hearings, whether the Attorney General may condition the right to a hearing on an organization's submission to an unlimited inquisition, and whether the Attorney General's hearing regulations violate the Constitution and the Administrative Procedure Act.

3. The court below held (W. R. 51; L.R. 39) that the provisions of the Executive Orders authorizing the designation of organizations are constitutional. There can be no doubt that petitioners, having been designated, have standing to challenge the validity of the designation authority. This would be true even if petitioners had rejected an administrative remedy. So in *Cole* v. *Young*, 351 U. S. 536, this Court held that a petitioner's summary discharge was not authorized by law even though he had rejected a proffered administrative hearing. See *Cole* v. *Young*, 96 App. D. C. 379, 381, 226 F. 2d 337, 339. Similarly, a defaulted litigant may appeal the default judgment on the grounds that the court was without jurisdiction or the default was entered without observance of legal requirements. In the present case, moreover, so far from rejecting an administrative remedy, petitioners, as we have seen, were denied one by the impossible and illegal conditions of the Attorney General.

The question whether constitutional power exists to brand organizations by executive determination (leaving aside issues of procedural due process) is obviously a serious one. This Court accepted the question for review in the *Anti-Fascist* case, but did

not dispose of it. The asserted power is unprecedented in our jurisprudence. As Allan Barth has observed (*The Loyalty of Free Men* (Cardinal ed.) 110):

> "The mandate which the executive order gives the Attorney General to designate voluntary associations as subversive is perhaps the most arbitrary and far-reaching power ever exercised by a single public official in the history of the United States."

In the *Anti-Fascist* case, Mr. Justice Black expressed the opinion that the designation authority violated the First Amendment and was a bill of attainder. He stated (at 143) that the Attorney General's list "smacks of a most evil type of censorship." Mr. Justice Douglas was of the opinion that the standards for designation were unconstitutionally vague, and he stated (at 177) that their use would "plant within our body politic the virus of the totalitarian ideology which we oppose." In *Barsky* v. *Board of Regents,* 347 U. S. 442, 459, the dissenting opinion of Justices Black and Douglas described the list as "an attainder published by the Attorney General of the United States in violation of the Constitution."

The opinions in the *Anti-Fascist* case recognized that designation inflicts a serious and often deadly blow on the victimized organization (see at 139, 141, 142, 161, 175). A group so marked with governmental disfavor is inevitably deprived of members, supporters, audiences, and even meeting places.

The Attorney General's list is not an outright interdiction of organizations, but employs the method of the index expurgatorius and the blacklist. It is an executive edict that certain groups should be shunned

because they are heretical, disloyal, "subversive," or otherwise officially obnoxious. Any person who disregards this blacklisting incurs possible exclusion from governmental employment, public odium, and a host of other sanctions. Professor Chafee has remarked (*The Blessings of Liberty*, p. 27):

> ". . . . the list was compiled only to guide this federal program, and yet it has been widely employed by states and cities and even by private organizations as proof of the disloyalty of teachers and employees. The radio industry has accepted it as a basis for canceling the contracts of its performers. The list has accordingly become a powerful weapon for injuring any group there named or any individual who belongs to such a group."

As this Court commented in *Watkins* v. *United States*, 1 L. ed. 2d 1273, 1290:

> "That this impact is partly the result of nongovernmental activity by private persons cannot relieve the investigators of their responsibility for initiating the reaction."

As against the list's devastating effect on rights of speech, assembly and association, the only value claimed for it is that it is convenient in the process of excluding loyalty and security risks from governmental employment. Clearly, the claimed benefit does not counterbalance the impairment of constitutional rights. Moreover, the list is of minimum worth for its asserted purpose. For it is obvious that an individual's organizational affiliation is not a rational basis for determining his loyalty or reliability. What the individual does in an organization may be significant, but the affiliation itself is not. Cf. *Wieman* v.

Updegraff, 344 U. S. 183; *Adler* v. *Board of Education*, 342 U. S. 485.

The Attorney General himself has recognized that the list of organizations should have only a minor function in screening governmental employees. He ruled (emphasis supplied) that "membership in, affiliation with, or any sympathetic association with any organization designated is simply *one piece of evidence which may or may not be helpful* in arriving at a conclusion as to the action which is to be taken in a particular case." 5 C.F.R., App. A., p. 200, 13 Fed. Reg. 1471-3, referred to in the *Anti-Fascist* case at 206, ftn. 23. Furthermore, the government's employee loyalty and security program discredits employees for affiliations with non-designated organizations, as well as with designated ones,[6] a circumstance which makes the list irrelevant to the program.

The Attorney General's list of "subversive" organizations therefore has little or no utility for its ostensible purpose. Its real effect is to establish a blacklist of organizations which displease the government. This is invalid as a governmental coercion of

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[6] In the sample group of cases contained in Yarmolinsky, *Case Studies in Personnel Security* (Bureau of National Affairs, Aug., 1955) loyalty-security charges against government employees were predicated in part on affiliation with the following non-designated organizations, among others: Institute of Pacific Relations (p. 32), American Labor Party (p. 86), Progressive Party (p. 110), Book Find Club (p. 197), Descendants of American Revolution (p. 197), American Association of Scientific Workers (p. 198), United Public Workers CIO (p. 198), California Committee for Political Unity (p. 198), California People's Legislative Conference (p. 198), American Federation of Teachers (p. 198), Western Writers Congress (p. 198), Medical Bureau to Aid Spanish Democracy (p. 199).

orthodoxy. *West Virginia Bd. of Education* v. *Barnette*, 319 U. S. 624, 642.

Certiorari should be granted so that this Court may determine whether the Constitution permits the Attorney General to condemn organizations by designating them under the Executive Orders. Determination of this question is important to the preservation of constitutional liberties and should be deferred no longer. Mr. Justice Jackson stated in his posthumously published book (*The Supreme Court in the American System of Government*, p. 25):

> "Such delays often mean that the damage is done before the remedy for invasion of civil liberties is available. For example: In 1951 the Court cast serious doubts upon the legality of the Attorney General's list of subversive organizations promulgated in 1947. But the list had long been widely circulated and accepted, and despite the Court's views it has never ceased to be used in the press, in the executive department, by and before congressional committees, and even in courts to prejudice individuals in their liberty, position and good name."

CONCLUSION

Certiorari should be granted.

Respectfully submitted,

JOSEPH FORER
DAVID REIN
711 Fourteenth St. N. W.,
Washington, D. C.
Attorneys for Petitioners

NATHAN WITT
P.O. Box 156,
Ansonia Station,
New York, N. Y.
Attorney for Association of Lithuanian Workers

I. G. NEEDLEMAN
165 Broadway,
New York, N. Y.
Attorney for American Lithuanian Literary Association

APPENDIX A

EXECUTIVE ORDERS AND REGULATIONS INVOLVED

I. Section 3, Executive Order 9835, 12 F. R. 1935

3. The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

II. Pertinent Provisions of Executive Order 10450, 18 F. R. 2489

Sec. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

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Sec. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

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(5) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or

subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means.

* * * * *

Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked. For the purposes described in section 11 hereof the Loyalty Review Board and the regional loyalty boards of the Civil Service Commission shall continue to exist and function for a period of one hundred and twenty days from the effective date of this order; and the Department of Justice shall continue to furnish the information described in paragraph 3 of Part III of the said Executive Order No. 9835, but directly to the head of each department and agency.

III. Attorney General's Rules of Procedure for the Federal Employee Security Program—Department of Justice Regulations of April 29, 1953, 18 F. R. 2619, 28 C. F. R. Part 41

Section 41.1 NOTICE TO AND BY ORGANIZATIONS. (a) Within ten days after the effective date of Executive Order No. 10450 of April 27, 1953, each organization which has been designated by the Attorney General pursuant to Paragraph 3 of Part III of Executive Order No. 9835 of March 21, 1947, may file with the Attorney General, Department of Justice, Washington, D. C., a written notice that it contests such designation. Failure to file a notice of contest within such period shall be deemed an acquiescence in such designation.

(b) Whenever the Attorney General after appropriate investigation proposes to designate an organization pursuant to Executive Order No. 9835 or Executive Order No. 10450, or both, notice of such proposed designation shall be sent by registered mail to such organization at its last known address. If the registered notice is delivered, the

organization, within ten days following its receipt or ten days following the effective date of Executive Order No. 10450, whichever shall be later, may file with the Attorney General, Department of Justice, Washington, D. C., a written notice that it desires to contest such designation. If the notice of proposed designation is not delivered and is returned by the Post Office Department, the Attorney General shall cause such notice to be published in the Federal Register, supplemented by such additional notice as the Attorney General may deem appropriate. Within thirty days following such publication in the Federal Register, such organization may file with the Attorney General, Department of Justice, Washington, D. C., a written notice that it desires to contest such designation. Failure to file a notice of contest within such period shall be deemed an acquiescence in such proposed action, and the Attorney General may thereupon after appropriate determination designate such organization and publish such designation in the Federal Register.

(c) The notice of contest provided in this Part shall be signed by the executive officers (or persons performing the ordinary and usual duties of executive officers) of the organization which desires to contest such designation or proposed designation.

Section 41.2 Statement and Interrogatories by Attorney General. Within sixty days following receipt of a notice of contest, the Attorney General shall cause to be forwarded to the organization by registered mail a statement of the grounds upon which the designation was or is proposed to be made and written interrogatories with respect thereto. In the case of organizations designated pursuant to Paragraph 3, Part III of Executive Order No. 9835, such statement may include information obtained since the designation.

Section 41.3 Reply by Organization. The organization, within sixty days following receipt of such statement and

interrogatories, may file a verified reply which shall be signed by the executive officers (or persons performing the ordinary and usual duties of executive officers) of such organization. The reply shall answer each interrogatory completely and with particularity and shall be limited to statements of fact. The organization may also submit supporting affidavits with its reply. Failure to answer any interrogatory or any part thereof shall be deemed an admission of the truth of the facts to which such interrogatory or part thereof refers. The submission of an evasive reply to any interrogatory or any part thereof shall likewise be deemed an admission of the facts to which such interrogatory or part thereof refers. Failure of the organization to file a reply within the sixty days provided therefor shall constitute an acquiescence in designation.

Section 41.4 Request for Hearing. Any organization filing a reply as provided in this Part may accompany its reply with a written request for a hearing. In the absence of such request, the Attorney General shall determine the matter on the basis of the information available to him and the reply of such organization.

Section 41.5 Notice of Hearing. Upon receipt of a request as provided in Section 41.4, the Attorney General will set a date and fix a place for hearing and notify the organization thereof by registered mail.

Section 41.6 Default. When an organization declines or fails to appear at any scheduled hearing, the Attorney General shall without further proceedings determine the matter on the basis of the information available to him and the reply of the organization.

Section 41.7 Hearing Board or Officer. For the purpose of conducting any hearing as provided in this Part the Attorney General shall assign such officer or board as he shall deem necessary.

Section 41.8 Hearing. (a) If upon the basis of the statement, interrogatories, reply and affidavits (if any) submitted as provided in this Part it appears to the board or hearing officer that a determination may appropriately be made without the taking of evidence, the proceeding may be conducted without the taking of such evidence.

(b) The Attorney General, at his election, may rely upon the statement of grounds upon which the designation was or is proposed to be made, or may introduce evidence in support thereof or supplemental thereto, or in rebuttal of any evidence received on behalf of the organization.

(c) Hearings before a board or officer shall be informal and shall be conducted in an orderly and impartial manner.

(d) An organization shall be entitled to appear by counsel or other representative of its own choice.

(e) Testimony shall be given under oath or affirmation.

(f) The ordinary rules of evidence need not be adhered to at the hearings but reasonable bounds shall be maintained as to relevancy, competency and materiality. Both the Attorney General and the organization may introduce such evidence as the board or officer may deem proper in the particular case. In the discretion of the board or officer, the affidavit of any witness may be received in lieu of his oral testimony.

(g) Whenever, in the judgment of the board or officer, the proposed testimony of any witness appears to be irrelevant, immaterial, cumulative, or repetitious, the board or officer may refuse to receive such testimony.

(h) All objections to the admission or exclusion of evidence or other rulings of the board or officer shall be limited to a concise statement of the reasons therefor and shall be made part of the record. Argument upon such objections may be limited in the discretion of the board or officer.

(i) The board or officer shall be authorized to receive as evidence on behalf of the Attorney General information or documentary material, in summary form or otherwise, without requiring disclosure of classified security information or the identity of confidential informants.

(j) Witnesses testifying before the officer or board shall be subject to cross-examination, provided that no witness on behalf of the Government shall be required to disclose classified security information or the identity of confidential informants.

(k) If in the course of a hearing any witness or other participant is guilty of misbehavior which obstructs the hearing, such person may be excluded from further participation in the hearing.

Section 41.9 Recording of Testimony. The testimony and proceedings at the hearing shall be recorded and transcribed by a person or persons designated by the Attorney General and made part of the record. The organization, by its counsel or authorized representative, shall be entitled to inspect the transcript, and, upon request and at its cost, shall be furnished a copy thereof.

Section 41.10 Determination. Within a reasonable time following completion of any proceeding hereunder, the Attorney General shall make a determination on the record which shall include the statement of the grounds, interrogatories, repliés to the interrogatories, affidavits, and testimony elicited at the hearing and other documents and papers filed in the proceeding, and shall notify the organization of the determination by registered mail. In making his determination the Attorney General shall take into consideration any handicap imposed upon an organization by the non-disclosure to it of classified security information or the identity of confidential informants and by reason of the lack of opportunity to cross-examine confidential informants.

Section 41.11 PREVIOUS DESIGNATIONS NOT AFFECTED. The promulgation of the rules of procedure contained in this Part shall not be deemed a revocation of any designation made by the Attorney General pursuant to Paragraph 3, Part III of Executive Order No. 9835, but each such designation shall continue in effect unless the administrative process herein provided is invoked by the organization affected and upon completion thereof a contrary determination is made by the Attorney General as to such organization.

APPENDIX B

OPINIONS AND JUDGMENT BELOW

Before PRETTYMAN, WILBUR K. MILLER and DANAHER, Circuit Judges.

WILBUR K. MILLER, *Circuit Judge:* These appeals were heard together because they present practically identical questions. Due to slight factual differences, we shall discuss the cases separately.

No. 12,975. The Attorney General of the United States on April 29, 1953, notified the Association of Lithuanian Workers, which is chartered under New York law as a fraternal insurance company, that he proposed to designate it as an organization coming within the purview of Executive Orders 9835 and 10450.[1] The Association on

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[1] Executive Order 10450, 3 C.F.R. 72 (Supp. 1953), provides in pertinent part:

> "Sec. 12. . . . [T]he Department of Justice shall continue to furnish the information described in paragraph 3 of Part III of the said Executive Order No. 9835, but directly to the head of each department and agency."

Paragraph 3 of Part III of Executive Order 9835, 3 C.F.R. 129, 131 (Supp. 1947), provides:

> "The Loyalty Review Board shall currently be furnished by the Department of Justice the names of each foreign or

May 8 gave notice of contest, and on July 8 the Attorney General sent it a statement of the grounds of the proposed designation and a set of interrogatories with respect thereto.[2] No reply to the statement and interrogatories was filed by the Association at any time. Instead, under date of September 8, 1953, it wrote to the Attorney General asserting its innocence, complaining that the interrogatories were impossible to answer, and attacking the hearing procedure as "unfair and undemocratic and contrary to the laws and traditions of this Nation." The Association did not ask that the interrogatories be modified or withdrawn, nor did it seek a conference or hearing concerning them. Having decided for itself that both the interrogatories and the prescribed hearing procedure were improper and unacceptable, the Association washed its hands of the whole matter and issued an ultimatum to the Attorney General in the closing paragraph of its letter, which we quote:

> "In view of the foregoing, we respectfully request that you discontinue this proceeding against the Association. Should you persist in your avowed purpose

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domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means."

[2] These steps were in accord with the rules (28 C.F.R. Part 41) governing procedure under Executive Order 10450, which further provide that within 60 days after the receipt of such statement and interrogatories, the organization may file a verified reply signed by its executive officers, together with a request for a hearing, which must be granted; that failure of the organization to file a reply within the 60-day period shall constitute an acquiescence in the designation.

to list it, the Association will have no alternative except to seek justice in the courts."

After the 60-day period for reply had ended, the Association engaged counsel, who wrote the Attorney General demanding a due process hearing concerning the proposed designation. His letter did not tender a tardy reply signed and verified by the Association's executive officers, and did not itself amount to a formal reply. This was pointed out to counsel. He was also advised that the Association had not filed a reply within the period permitted therefor but in its letter of September 8 had rejected the administrative hearing which would have been available after reply and upon request. In January, 1954, the Attorney General designated the Association, holding that, under the rule, its failure to reply amounted to acquiescence.

Thereupon the Association filed this action in the United States District Court for the District of Columbia to enjoin the Attorney General from "continuing the designation" and to require him to notify all federal departments and agencies, and the public, that the designation "is withdrawn." The complaint attacked the two Executive Orders as unconstitutional and pleaded the procedures and regulations thereunder are illegal and violative of due process. It charged the Attorney General had violated the Executive Orders by designating the Association without appropriate investigation and without notice and hearing.

The Attorney General answered. He outlined the information concerning the Association which his investigation had developed and upon the basis of which he had proposed the designation, and alleged the Association had failed to exhaust its administrative remedies and so was not entitled to judicial review. He then moved for summary judgment or in the alternative for judgment

on the pleadings. The latter was granted by the District Court and this appeal followed.

We had before us in *National Lawyers Guild* v. *Brownell*, 96 U. S. App. D. C. 252, 225 F. (2d) 552 (1955), *cert. denied* 351 U. S. 927 (1956), a situation almost identical with that presented here.[3] The Guild was notified by the Attorney General that he proposed to designate it. It gave notice of contest, after which it received from the Attorney General a statement of grounds and interrogatories. Without replying thereto, the Guild sued in the United States District Court for judgment declaring Executive Orders 9835 and 10450 unconstitutional and void and the procedures adopted by the Attorney General under those Orders unconstitutional. It also attacked the interrogatories submitted to it. We held that the Executive Orders and procedures prescribed thereunder are valid; that a claim of constitutional invalidity does not negative the requirement for exhaustion of remedies and that the proper place to test the interrogatories in the first instance is before the administrative body. In short, we held the Guild must exhaust the proffered administrative remedy, and so affirmed the District Court's grant of summary judgment to the Attorney General. These holdings are dispositive of the present case unless, as it claims, the Association did not reject but rather was wrongfully denied the administrative remedy.

As we have seen, the appellant did not reply to or challenge the interrogatories before the administrative body, which would have entitled it to a earing. Instead, it notified the Attorney General that he must withdraw the designation proceeding or be faced with litigation. This was clearly a refusal to utilize the administrative process, and precludes judicial review of the grounds for and the propriety of designation. In *National Council of*

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[3] Cf. National Council of American-Soviet Friendship v. Brownell, No. 13,185, decided by this court February 28, 1957.

American-Soviet Friendship v. *Brownell*, No. 13,185, decided February 28, 1957, we rejected the appellants' insistence "that they may default and still continue to litigate," saying,

> ". . . We find no support in the authorities for any such contention, indeed the cases are otherwise. The plight of the appellants is of their own choice and of their own making. We are satisfied that the principles underlying the exhaustion rule are clearly applicable here. . . . ."

The Association says that "even a rejection of the administrative remedy would not bar judicial determination *after designation* of whether the designation was made by an invalid procedure and whether the designation power is unconstitutional." If it be assumed that when these questions are raised after designation the court should answer them despite failure to exhaust administrative remedies, the Association is no better off; for in the *Lawyers Guild* opinion we upheld the constitutionality of the Executive Orders and the validity of the procedures thereunder. We adhere to that holding.

No. 12,976. This case differs from the other in that, when the American Lithuanian Workers Literary Association received from the Attorney General a statement of grounds for designation with interrogatories, it seasonably filed what it termed a reply thereto which was signed and verified by its president and secretary.

The document merely says the Association is engaged in innocent activities and does not come within the purview of Executive Order 10450; that the alleged authority of the Attorney General thereunder and under his own regulations is neither expressly nor impliedly authorized by the Constitution and is violative of the First, Fifth, Ninth and Tenth Amendments. The reply concluded with this paragraph:

> "Specifically, proper standards are not set forth in the Executive Order and in the regulations promulgated by the Attorney General; the so-called standards are vague, indefinite and without clear meaning, and the Regulations perpetuate the uncertainty. The proceedings should be dismissed."

A hearing was not requested, even though the Association had purportedly replied. Its arguments for reversal are substantially the same as those we considered and rejected in the previous case.

The so-called reply was not a response to the Attorney General's statement of grounds and interrogatories, but a demand for dismissal on pleas of innocence and unconstitutionality. Having failed to reply, the Association cannot obtain judicial relief from designation.

The judgments are affirmed.

PRETTYMAN, *Circuit Judge*, concurring in part and dissenting in part: In No. 12976, *American Lithuanian Workers Literary Association, Inc.* v. *Brownell*, I concur in the result reached by the majority. The Literary Association failed to make to the Attorney General an objection to the proffered procedure with sufficient specificity to enable him to pass upon the challenge. It merely asserted that the whole proceeding was unconstitutional.

In No. 12975, *Association of Lithuanian Workers* v. *Brownell*, I would reverse. I think the Workers were not proffered due process and they adequately tried to obtain valid consideration from the administrative agency.

1. The Regulations[1] provide that "The reply [of an organization to a statement of charges and interrogatories] shall answer each interrogatory completely and with particularity and shall be limited to statements of

[1] 18 FED. REG. 2620 (1953) 28 C.F.R. § 41.3 (Supp. 1955).

fact." They provide further[2] that "Any organization filing a reply as provided in this part may accompany its reply with a written request for a hearing." Thus the Regulations afford no opportunity for a hearing except upon the filing of a reply to each interrogatory completely and with particularity. I take it that "completely and with particularity" means exactly what those words ordinarily mean.

2. Many of the interrogatories submitted to the Workers were impossible—not merely difficult but impossible—to answer completely and with particularity. Interrogatory (6) will serve as an example; others are like it. Included in the manifold intricacies of that interrogatory was:

> "(a) List the names and addresses of all those persons who are presently members of the L.D.S. [the Workers].
> "(b) Have any of those persons listed * * * at any time been
>
> * * * *
>
> "iii. sympathetically associated with
> "* * * any * * * group officially designated by the Attorney General pursuant to Executive Orders 10450 and 9835?
> "(c) If the answer to Interrogatory 6(b) or any part thereof is in the affirmative, list the names and addresses of all such persons and indicate the periods during which they were
>
> * * * *
>
> "iii. sympathetically associated * * *."

There are some 7,000 members of the Workers, and there are some 250 organizations on the Attorney General's list. It was impossible for anyone to say under oath whether any of 7,000 members had ever at any time been sympathetically associated with any one of 250 organizations.

---

[2] *Id.*, 28 C.F.R. § 41.4.

Perhaps another illustration will emphasize the point. Interrogatory (7) includes this inquiry:

> "(a) List the names and addresses of persons who have, at any time, been * * * invited to speak or to appear as guests by the * * * various lodges [of the Workers] * * * or by * * * members of the * * * lodges * * * at any meetings * * * conducted * * * by * * * any of its * * * lodges or branches.
>
> * * * * *
>
> "(c) Have any of those persons listed * * * at any time been
>
> * * * * *
>
> "iii. sympathetically associated with * * * any * * * group officially designated by the Attorney General * * *?"

There are 167 lodges in the Association. Nobody, I venture to assert, could list all the persons invited to speak or to appear as guests at every meeting for twenty-three years of all of 167 lodges by any and all of 7,000 members.

A reading of all of the interrogatories as they appear in the record will demonstrate my point beyond peradventure of doubt. They were imposible to answer.

3. From the foregoing the conclusion is clear that the Workers were effectively and in fact denied opportunity for hearing. They were not proffered a hearing unless they answered every part of every interrogatory completely and with particularity. The proffer of a hearing was a nullity, being conditioned upon an absolute impossibility.

4. The Workers made due and timely response to the interrogatories. They wrote the Attorney General under date of September 8, 1953, which was within the allowed sixty days from July 13, 1953, the date of receipt of the statement and interrogatories, saying that the statement had been discussed at a meeting of the

General Executive Board "and we are writing you accordingly." The letter was signed in the name of the Association by the president and the secretary. They said in part: "Your rules and requirements make it impossible for the Association to have a hearing in regards to your proposed listing. For example, you would require the officers, under penalty of perjury, to furnish you with names and addresses of all of its members and to indicate with respect to each and every one, what his political beliefs, affiliations and 'sympathetic associations' are or ever were. This requirement is, as you must know, impossible to meet." The Association said it had no records of any political affiliations of its members and that "Therefore, it would be impossible for us to supply you with this information".

Surely the foregoing was sufficient to put the Attorney General on notice that the Association had no means by which to answer his interrogatories and that they were impossible to answer. The Workers could not then ask for a hearing, because the Regulations specifically require that a "reply as provided in this part" must be the basis for the request for a hearing. I think it cannot now be held that the Workers are wholly foreclosed because they did not request a hearing which under the Regulations they could not request.

On October 4, 1953, the Workers made a second response, written by counsel. He was quite specific in saying that "aside from those numbered (1), (2) and (3), the Interrogatories are improper in that they are impossible to answer". And he cited, by way of example, Interrogatories (5)(b) and (c), (6)(b) and (c), and (7)(c) and (d), saying: "* * * the Association does not have the information relating to political beliefs or affiliations called for by [those interrogatories]." Counsel continued by specifically stating that the Association desired a hearing "but does not believe that such a hear-

ing should be conditioned upon responses to Interrogatories (4) to (23), inclusive".

5. In response to the charges forwarded to them, as distinguished from the interrogatories, the Workers' letter of September 8th made clear and careful response, categorically denying the purport of the involved charges and affirmatively asserting the activities to which the Association is "confined strictly".

6. I think the proffer of a hearing was null, that the Workers were not afforded due process, and that they effectively challenged to the administrative officer the validity of the proffered procedure. I would remand to the Attorney General with instructions either to revise the procedure so as to proffer effectively and actually an opportunity for hearing or to dismiss the charges.

7. I am in considerable doubt as to the validity of parts of the Regulations. For example, Section 41.3 provides:

> "Failure to answer any interrogatory or any part thereof shall be deemed an admission of the truth of the facts to which such interrogatory or part thereof refers. The submission of an evasive reply to any interrogatory or any part thereof shall likewise be deemed an admission of the facts to which such interrogatory or part thereof refers."

I would not know what "facts" the questions about sympathetic association (as in Interrogatories (6) and (7) above discussed) "refers" to. And the rule that an "evasive reply" to any part of an interrogatory shall be deemed an admission of "the facts" to which such part "refers" is particularly objectionable. Other parts of the Regulations are of doubtful validity, in my view, but it is not necessary that I reach the question and so I do not.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1957

C. A. 406-54

No. 12,975

ASSOCIATION OF LITHUANIAN WORKERS, *Appellant*,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, *Appellee*.

April Term, 1957

C. A. 1252-54

No. 12,976

AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION, INC., *Appellant*,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, *Appellee*.

Appeals from the United States District Court for the District of Columbia.

Before: Prettyman, Wilbur K. Miller and Danaher, Circuit Judges.

Judgment

These appeals came on to be heard on the records from the United States District Court for the District of Columbia, and were argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgments of the said District Court appealed from in these cases be, and they are hereby, affirmed.

Dated: May 9, 1957.

Per Circuit Judge Wilbur K. Miller

Separate opinion by Circuit Judge Prettyman concurring in the result in No. 12,976 and dissenting as to No. 12,975.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 295

ASSOCIATION OF LITHUANIAN WORKERS AND AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION, INC., *Petitioners,*

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION

JOSEPH FORER
DAVID REIN
Attorneys for Petitioners

NATHAN WITT
Attorney for Association of Lithuanian Workers

I. G. NEEDLEMAN
Attorney for American Lithuanian Literary Association

IN THE

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION

I.

In our petition we contended that the Attorney General denied petitioners an administrative remedy by conditioning opportunity to contest the proposed designation on their answering interrogatories which he had no legal right to ask and which were impossible to answer. We pointed out that when petitioners protested the interrogatories and the spurious administrative procedure, the Attorney General defaulted them

without a hearing and without even answering their objections.

Respondent's Opposition does not contend that the Attorney General had a right to ask the interrogatories or that they could be answered. Unable to defend the interrogatories, the Opposition argues that petitioners may not complain about them because petitioners' objections to the Attorney General were not in proper form. Thus the Opposition alleges that the two communications of the Workers Association which protested the interrogatories—the officers' letter of September 8, 1953 (W. R. 39-41) and counsel's letter of October 4, 1953 (W. R. 42-43)—had the following defects. (1) The officers' letter was not verified, a fact which "alone would have been sufficient grounds for refusing to treat it as a reply" (Opp. 19). This statement is made despite the fact that the officers' letter was, of course, not intended or claimed to be a reply to the interrogatories, but rather a statement of objections to the interrogatories and to the Attorney General's procedures. (2) Though the officers' letter was timely, having been filed within the time permitted to answer the interrogatories (Opp. 18); it was not sufficiently specific and clear to constitute a protest which had to be passed upon (Opp. 18-19). (3) On the other hand, counsel's letter was sufficiently specific and clear, but it did not have to be passed upon either because it was not timely and was not signed by the officers (Opp. 17). This statement is made despite the fact that counsel's letter was sent about four months before the designation was made and though the Attorney General never answered the officers' letter.

With regard to the claim that the officers' letter was not sufficiently clear to constitute a protest against the

interrogatories, the Opposition recognizes that the letter "complained generally that the interrogatories were impossible to answer,* and attacked the Rules and hearing procedures as unconstitutional" (Opp. 19). "But," the Opposition continues, "it did not ask that any or all of the interrogatories be modified or withdrawn; it did not request a hearing on either the question of designation or the merits of its objections; nor did it ask the Attorney General to give any consideration whatsoever to its objections." The theory seems to be that the Workers Association was delinquent for not presenting its objections in accordance with some unspecified formal requirements. But the letters clearly indicated that the organization wanted its objections considered and the interrogatories withdrawn. Nor is it possible to see why well-founded objections may be disregarded because a hearing was not requested—particularly since the Attorney General's regulations prohibit a hearing, and even the asking of one, unless his interrogatories are answered without objection.

The criticisms made of the Workers Associations' objections rest on and seek to propagate the erroneous premise that the Attorney General's regulations specify requirements of time, verification, signature, specificity, and other matters of form, for the making of objections to interrogatories, and that petitioners were correctly defaulted because they did not comply with these requirements. The truth is, however, that the Attorney General's regulations make no requirements governing the form of objections. On the contrary,

* Of course the objection on this score was very specific (W. R. 40-41).

they do not contemplate, and actually prohibit on pain of default, the making of objections. Section 41.3 states: "The reply shall answer *each* interrogatory *completely and with particularity* and *shall be limited to statements of fact.*" And section 41.4 provides that a hearing may not even be requested unless *such a reply* ("a reply as provided in this part") is filed.

The facts therefore contradict the government's protestation (Opp. 17) that if only the organization had made its objections in accordance with (non-existent) formal requirements, it would not have been defaulted for failing to answer the interrogatories. In view of the nature of the interrogatories and the fact that the regulations prohibit objections, the organization would not have waived its right to complain of the interrogatories even if it had not protested them. In fact, however, here the organization protested, not once but twice, specifically and generally, clearly and vigorously, and its protests were well-founded. The Attorney General nevertheless defaulted it for failing to answer the illegal and impossible inquisition, and this inexcusable action was in conformity with his inexcusable regulations. This case therefore squarely presents the question of whether the Attorney General may lawfully designate an organization which he has by artifice denied a hearing.*

---

* The Opposition's criticism of the response of the Literary Association is that it did not object to the interrogatories with sufficient specificity (Opp. 20). The response, however, objected that the Attorney General had no power to inquire into the organization's writings and publications (thus raising an objection to Interrogatories 20, 21, 22, 31, 36, 38) and that the Literary Association never inquired into the politics of its members (thus objecting to Interrogatories 2, 3, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 27, 36). See L. R. 30-31, 18-29.

II.

Since petitioners were denied an administrative remedy, they are not precluded by the doctrine of exhaustion from raising all possible objections to their designation by the Attorney General. But even if they had rejected the administrative remedy, as the Opposition erroneously claims, nevertheless, having been designated, they are entitled to challenge the power of the Attorney General to designate organizations. As our petition shows (p. 29), this appears from principle and from this Court's decision in *Cole* v. *Young*. The Opposition's position to the contrary (pp. 15-16) rests on an uncritical assimilation of several exhaustion situations. The most the Opposition's authorities demonstrate is the following: (1) Before the final administrative order is entered, the doctrine of exhaustion may preclude even a challenge to power in an action brought to enjoin an administrative hearing or potential administrative action. (2) After the administrative order is entered, one who rejected an administrative remedy may be precluded from litigating the *correctness* of the administrative findings and order. Neither of these two types of rulings precludes a challenge *to power after the administrative process has concluded* even if the aggrieved party rejected a proffered administrative remedy. In that situation, the party may litigate the administrative body's overruling of his demurrer to its authority. This is the holding of *Cole* v. *Young*, which respondent ignores.

Under any circumstances, therefore, this case presents the important question, not yet resolved by this Court, as to whether the Attorney General has the constitutional power to destroy organizations by de-

famatory designations. We cannot take seriously respondent's contention (Opp. 21-22) that the Court "implicitly" and more or less accidentally decided this important and serious matter in the *Anti-Fascist, Adler* and *Wieman* cases.

III.

Respondent is also guilty of an inaccuracy in stating (Opp. 15, 20) that the court below ruled that it need not decide whether the claimed designation power was constitutional. The court below by-passed this question stating that even assuming that the question could be raised after designation, despite failure to exhaust administrative remedies, the claimed power to designate was valid (Petition, p. 11a). In any event, even if the government were right as to the holding of the court below, the issue as to whether one can challenge the lack of constitutional power, without first exhausting administrative remedies, is an important one which requires resolution by this Court.

Respectfully submitted,

JOSEPH FORER
DAVID REIN
Attorneys for Petitioners

NATHAN WITT
Attorney for Association of Lithuanian Workers

I. G. NEEDLEMAN
Attorney for American Lithuanian Literary Association

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No. 295

In the Supreme Court of the United States

OCTOBER TERM, 1957

ASSOCIATION OF LITHUANIAN WORKERS AND AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION, INC., PETITIONERS

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
GEORGE COCHRAN DOUB,
Assistant Attorney General,
PAUL A. SWEENEY,
B. JENKINS MIDDLETON,
Attorneys,
Department of Justice, Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 295

ASSOCIATION OF LITHUANIAN WORKERS AND AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION, INC., PETITIONERS

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

No opinion was filed by the District Court. The opinion of the Court of Appeals and the dissenting opinion of Judge Prettyman (W. R. 46–56; L. R. 34–44; Pet. 7a–16a [1]) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 9, 1957 (W. R. 57; L. R. 45; Pet. 17a). The

[1] As in the petition, petitioners are hereafter referred to as the Workers Association and the Literary Association and record references are designated by "W. R. —" and "L. R. —," respectively. References to the petition are designated "Pet. —".

petition for a writ of certiorari was filed on July 19, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTIONS PRESENTED

1. Whether petitioners' failure to exhaust the proffered administrative remedies precluded judicial review of the grounds for, and the propriety of, their designation as organizations falling within the purview of Executive Orders 9835 and 10450.

2. Whether either of the petitioners filed a timely reply to the respective statements by the Attorney General of the grounds for proposed designations of the organization, and the written interrogatories sent to the organization.

3. Whether the Court of Appeals correctly ruled that, assuming the question of constitutional power to be properly before the court, Executive Order 10450 validly authorizes the Attorney General, after appropriate proceedings, to designate organizations as being within the purview of Executive Orders 9835 and 10450.

STATUTES, EXECUTIVE ORDERS, AND REGULATIONS INVOLVED

The pertinent provisions of Section 9A of the Hatch Act (53 Stat. 1148, formerly 5 U. S. C. 118j); of Public Law 733, 81st Congress (Act of August 26, 1950, 64 Stat. 476, 5 U. S. C. 22–1 *et seq.*); of Executive Order 9835 (12 F. R. 1935); of Executive Order 10450 (18 F. R. 2489); and the provisions of the Attorney General's Rules of Procedure for the federal employee security program (Department of Justice Regulations of April 29, 1953, 18 F. R. 2619, 28 CFR, 1956 Supp., Part 41),

are set forth in the Appendix, *infra*, pp. 23–33. Sections 41.3 and 41.4 of these Rules provide as follows:

> SECTION 41.3. *Reply by organization.*—The organization, within sixty days following receipt of such statement and interrogatories, may file a verified reply which shall be signed by the executive officers (or persons performing the ordinary and usual duties of executive officers) of such organization. The reply shall answer each interrogatory completely and with particularity and shall be limited to statements of fact. The organization may also submit supporting affidavits with its reply. Failure to answer any interrogatory or any part thereof shall be deemed an admission of the truth of the facts to which such interrogatory or part thereof refers. The submission of an evasive reply to any interrogatory or any part thereof shall likewise be deemed an admission of the facts to which such interrogatory or part thereof refers. Failure of the organization to file a reply within the sixty days provided therefor shall constitute an acquiescence in designation.
>
> SECTION 41.4 *Request for hearing.*—Any organization filing a reply as provided in this part may accompany its reply with a written request for a hearing. In the absence of such request, the Attorney General shall determine the matter on the basis of the information available to him and the reply of such organization.

STATEMENT

Petitioners, the Association of Lithuanian Workers and the American Lithuanian Workers Literary Association, Inc., seek to enjoin the Attorney General from

continuing his designations of them as organizations within the purview of Executive Orders 9835 and 10450. The pertinent facts may be summarized as follows:

1. *The Statutes, Orders and Rules of Procedure.*—Section 9A of the Hatch Act, passed by Congress in 1939, made it unlawful for any employee of the Federal Government "* * * to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States".[1] Pursuant to this and other authority, the President in 1947 issued Executive Order 9835, 12 F. R. 1935 (App. *infra*, pp. 24–25), establishing the President's Federal Employees Loyalty Program (see *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123). Thereafter, by the Act of August 26, 1950 (64 Stat. 476, 5 U. S. C. 22–1, *et seq.*; App. *infra*, pp. 23–24), Congress provided for the summary suspension of federal employes in the interest of national security.

On April 27, 1953, the President issued Executive Order 10450, 18 F. R. 2489 (App. *infra*, pp. 25–27), invoking the authority vested in him "by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U. S. C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U. S. C. 632, *et seq.*); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U. S. C. 118j) [the Hatch Act]; and the act of August 26, 1950, 64 Stat. 476 (5 U. S. C. 22–1, *et seq.*) [the summary suspension

[1] This section was repealed and its provisions, as pertinent here, were essentially reenacted as Section 118p of Title 5 of the United States Code (Supp. III), by the Act of August 9, 1955, Sections 1 and 4 (2), 69 Stat. 624–625.

statute]" (see *Cole* v. *Young*, 351 U. S. 536). The Executive Order revoked and superseded Executive Order 9835 and established new standards and procedures, based on considerations of security rather than loyalty, governing the employment and retention in employment of persons in the federal service. In conformity with the Act of August 26, 1950, cited in the Preamble of the Order, Executive Order 10450 prescribes the standard that employment and retention in employment of all government officers and employees to whom the Order pertains be "clearly consistent with the interests of the national security" (Sections 2, 5, 6, 8, App. *infra*, pp. 25–27).

As in the earlier Loyalty Program, one of the factors to be considered in reaching determinations under the Security Program is "[m]embership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, * * *" (Section 8 (a) (5), App. *infra*, pp. 26–27). In this connection, the Department of Justice is directed to continue to furnish the information described in Part III, Paragraph 3, of Executive Order 9835 (App. *infra*, pp. 24–25)[3] directly to the heads

[3] "* * * the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means."

of executive departments and agencies (Sections 12, 13, App. *infra*, p. 27). Pursuant to this directive, the Attorney General, on April 29, 1953, 18 F. R. 2741, redesignated the organizations previously designated under Executive Order 9835. Concurrently, the Attorney General prescribed Rules of Procedure with respect to notice, hearing, and designation of organizations, 18 F. R. 2619 (App. *infra*, pp. 27–33).

The Rules permit an organization, which the Attorney General after appropriate investigation proposes to designate, to file with the Attorney General, within ten days following receipt of notice by registered mail of the proposed action, a statement that it contests the proposed designation. Section 41.1 (b) (App. *infra*, pp. 28–29). Failure to contest the proposed action may result, after an appropriate determination, in the designation of the organization (*ibid.*).

The Rules prescribe that, within sixty days after a proposed designation is contested, the Attorney General shall furnish the organization in question with a statement of the grounds upon which the contemplated action is based, and written interrogatories with respect thereto. Section 41.2 (App. *infra*, p. 29). The organization is then given sixty days within which to reply. The reply must be verified and signed by the executive officers of the organization, and "shall answer each interrogatory completely and with particularity and shall be limited to statements of fact". Supporting affidavits may be submitted with the reply. Failure to answer any interrogatory shall be deemed an admission of the truth of the facts to which the

interrogatory refers; the submission of an evasive reply to an interrogatory shall be deemed a similar admission; and "[f]ailure of the organization to file a reply within the sixty days provided therefor shall constitute an acquiescence in designation". Section 41.3 (App. *infra*, pp. 29–30).

Any organization filing a reply as provided in the regulations may at the same time file a written request for a hearing. Section 41.4 (App. *infra*, p. 30). Upon receipt of such a request, the Attorney General is required to set a date and fix a place for the hearing, and to notify the organization by registered mail. Section 41.5 (App. *infra*, p. 30).

The hearing required by the Rules is to be conducted informally, and in an orderly and impartial manner, before a board or officer selected by the Attorney General. Section 41.7, 41.8 (c) (App. *infra*, pp. 30–32). During the proceedings an organization is entitled:—to be represented by counsel of its own choice (Section 41.8 (d), App. *infra*, p. 31); to introduce relevant and material evidence (Section 41.8 (f), App. *infra*, p. 31); to file objections to, and be heard on, the admission or exclusion of evidence (Section 41.8 (h), App. *infra*, pp. 31–32); to cross-examine witnesses insofar as consistent with the interests of national security (Section 41.8 (j), App. *infra*, p. 32); and to inspect or be furnished with, on payment of costs, a transcript of the proceedings (Section 41.9, App. *infra*, p. 32). Relevant or material evidence, in summary form where full disclosure would be inimical to the security of the nation, may also be introduced on behalf of the

Attorney General (Section 41.8 (b) and (i), App. *infra*, pp. 31–32).

Within a reasonable time following completion of the hearing, the Attorney General is required to make his final determination on the basis of the entire record, and to notify the organization in question by registered mail. Section 41.10 (App. *infra*, pp. 32–33). Any handicap imposed upon an organization by virtue of the non-disclosure of classified security information or the identity of confidential informants is to be taken into consideration by the Attorney General in making his final determination (*ibid.*).

2. *The administrative actions in this case*—(a) *The Workers Association case.*—On April 29, 1953, the Attorney General served notice upon the Workers Association by registered letter that he proposed to designate it "as coming within the purview of Executive Orders No. 9835 and No. 10450 in accordance with the rules promulgated thereunder * * * ". A copy of the Rules was attached to the notice (W. R. 21). The Worker Association filed a notice of contest on May 8, 1953 (W. R. 22), and on July 8, 1953, the Attorney General served a statement of grounds and interrogatories upon the Association (W. R. 23–38).

The grounds stated for the proposed designation were, in brief, that the Workers Association was formed by and operated under the leadership of Communist Party members; that from its formation it had constituted a vehicle to further the aims, policies and objectives of the Communist Party, distributing Communist propaganda and raising funds for the Communist Party; that it had engaged Communist

Party members to speak at functions; that it had published and circulated three named newspapers which consistently supported and implemented Communist Party policies; and that the Association "has never knowingly deviated in its program and objectives from the program and objectives of the Communist Party-U. S. A." (W. R. 23–26). The twenty-three interrogatories requested information concerning the Association, its operations, and the Communist activities or affiliations of the Association, of its lodges or branches, and of its officers and members (W. R. 26–38).

On September 8, 1953, the Association wrote a letter to the Attorney General acknowledging receipt of the statement of grounds and the interrogatories (W. R. 39–41). The letter stated that the activities of the Association were confined to the operation of a fraternal insurance beneficial society and that it was not carrying out the policies of the Communist Party. The Association objected that the Attorney General's rules and requirements made it "impossible for the Association to have a hearing"; that, "[f]or example", respondent would require the Association's officers to furnish the names, addresses, and political beliefs, affiliations and sympathetic associations of all its members, an impossible requirement since the Association had no such records; and that the rules conditioned entitlement to a hearing upon compliance "with this and other unconstitutional and impossible requirements" (W. R. 40–41). After further general objections to the procedures provided and specific objections to those provisions of the regulations permitting the use

of information undisclosed to the organization, the letter closed with the following statement (W. R. 41):

> In view of the foregoing, we respectfully request that you discontinue this proceeding against the Association. Should you persist in your avowed purpose to list it, the Association will have no alternative except to seek justice in the courts.

The letter was not verified nor was it accompanied by a written request for a hearing.

On October 4, 1953, Harold I. Cammer, Esq., wrote to the Attorney General, informing him that he had been retained as counsel for the Workers Association, objecting to and requesting the withdrawal of all the interrogatories except the first three, on the ground that they were impossible to answer or asked information which it was improper for the Attorney General to attempt to elicit, and advising that the Association desired a hearing (W. R. 42–43).

The Assistant Attorney General in charge of the Criminal Division of the Department of Justice replied to Mr. Cammer's letter on November 25, 1953 (W. R. 43–44). He noted that "[o]n September 8, 1953, the Association advised the Department that it rejected the hearing provided for under the rules * * *". He further noted that Mr. Cammer's subsequent letter was not filed within the 60-day period provided for in the Rules, nor was the request for a hearing contained therein signed by the executive officers of the Association, and it was therefore neither timely nor in proper form (W. R. 44).

(b) *The Literary Association case.*—The Attorney General served the Literary Association with a notice of his proposal to designate it and a copy of his Rules on April 29, 1953 (L. R. 14). Notice of contest was dated May 21, 1953 (L. R. 15), and on July 24, 1953, the Attorney General served his statement of grounds and interrogatories (L. R. 16–29). The grounds stated for the proposed designation (L. R. 16–18) were essentially the same as those set forth in the Workers Association case (*supra,* pp. 8–9), and the thirty-eight interrogatories (L. R. 18–29) requested information similar to that sought to be elicited from the Workers Association (*supra,* p. 9).

On September 24, 1953, the Attorney General received a sworn statement, signed by the President and Secretary of the Literary Association, purportedly replying to the statement of grounds and the interrogatories (L. R. 11, 30–32). The statement contained no responses to the interrogatories, nor any specific objections thereto. It asserted instead that the Literary Association had abided by the terms of its certificate of incorporation and adhered to its purposes of carrying on literary activities; that it had never inquired into the politics or religion of its members; that its activities did not come within the provisions of Executive Order 10450; that the Federal Constitution precluded the Attorney General from inquiring into the writings and publishings of the Literary Association; that under the Constitution respondent had no authority to make the proposed designation; and that "[t]he proceedings should be dismissed" (L. R. 30–31).

On January 22, 1954, the Attorney General signed the following order designating both the Workers Association and the Literary Association as organizations within the purview of Executive Order 10450 (19 F. R. 655):

* * * * *

> Following notice of proposed designation under Executive Order No. 10450, the organizations listed below filed notice of contest of such designation and were therefore forwarded by registered mail a statement of the grounds upon which the designation was proposed to be made, together with interrogatories with respect thereto. Section 41.3 of the rules of procedure with respect to notice, hearing and designation of organizations in connection with the Federal employee security program (18 F. R. 2619; 28 CFR 41.1 to 41.11) provides that within sixty days following receipt of such statement and interrogatories the organization shall file a verified reply, answering each interrogatory completely and with particularity. The following organizations have failed to comply in the manner required by said § 41.3 of the rules, and these organizations are therefore designated pursuant to Executive Order No. 10450:
>
> American Lithuanian Workers Literary Association (also known as Amerikos Lietuviu Darbininku Literaturos Draugija).
>
> * * * * *
>
> Association of Lithuanian Workers (also known as Lietuviu Darbininku Susivienijimas).

* * * * *

3. *The proceedings below.*—Following this concurrent designation, both the Workers Association and the Literary Association filed complaints in the Dis-

trict Court for the District of Columbia. The complaint of the Workers Association seeks a judgment enjoining respondent from continuing to designate it and requiring him to notify all federal departments and agencies that the designation is withdrawn (W. R. 11–12). The complaint of the Literary Association asks the court, in addition, to declare the regulatory procedures illegal and unconstitutional, and to require the Attorney General to notify the general public, as well as the heads of departments and agencies, of the withdrawal of the designation (L. R. 7). The complaints allege, in essence, that the Workers Association and the Literary Association conduct a fraternal insurance business and literary and publishing activities, respectively; that they are not organizations of the kind referred to in Executive Orders 9835 and 10450; that their designations were illegal and unconstitutional in that they were accomplished without a hearing in violation of the Attorney General's rules, the Administrative Procedure Act, and the due process clause of the Fifth Amendment; that Executive Orders 9835 and 10450 are unconstitutional on their face and as applied under the First, Fifth, Ninth and Tenth Amendments, as well as under the prohibition against bills of attainder; that the Attorney General's Rules of Procedure violate the Administrative Procedure Act and the due process clause of the Fifth Amendment; and that the designations violated the Executive Orders because made without appropriate investigation and determination and because contrary to fact. The Workers Association complaint adds

that, in construing its letter of September 8, 1953 as a rejection of the hearing provided by the Rules, the Attorney General acted arbitrarily (W. R. 8–9).

The Attorney General filed answers setting forth, *inter alia*, that petitioners' failure to avail themselves of the opportunity to obtain a full administrative hearing precluded them from judicial relief (W. R. 12–44; L. R. 8–32). In each case, respondent moved for judgment on the pleadings or, in the alternative, for summary judgment (W. R. 44–45; L. R. 32). Orders granting the respective motions for judgment on the pleadings were entered on August 11, 1955 (W. R. 45; L. R. 33).

On appeal, the cases were heard and decided together and the judgments affirmed (Pet. 17a). In the Workers Association case, the court (per Wilbur K. Miller, J.) ruled that the Association "did not reply to or challenge the interrogatories before the administrative body, which would have entitled it to a hearing", but instead rejected the administrative process; having failed to exhaust the proffered administrative remedy, the Association was not entitled to judicial review "of the grounds for and the propriety of the designation" (Pet. 10a). The court added that, even if the validity of the designation power and of the designation procedures were properly before it, it would uphold the constitutionality of both on the authority of its decision in *National Lawyers Guild* v. *Brownell*, 225 F. 2d 552 (C. A. D. C.), certiorari denied, 351 U. S. 927 (Pet. 11a). Judge Prettyman, dissenting, took the view that the Attorney General's Rules require a complete reply to each interrogatory,

that entitlement to a hearing was therefore conditioned in this case upon the submission of answers to questions which he viewed as impossible to answer, and that the offer of a hearing was therefore a nullity. He also read the Association's letter of September 8, 1953 as a timely response to the statement of grounds and interrogatories (Pet. 12a–16a).

In the Literary Association case, Judge Miller stated for the court that the Association's "so-called reply was not a response to the Attorney General's statement of grounds and interrogatories" and that therefore the Association could not obtain judicial relief (Pet. 11a–12a). Judge Prettyman concurred on the ground that the Association had failed to object to the proffered procedure with sufficient specificity to enable the Attorney General to pass upon the challenge (Pet. 12a).

ARGUMENT

1. The Court of Appeals ruled that it need not decide the constitutional validity of either the designation procedures or the Attorney General's general power of designation, since petitioners had rejected or failed to take advantage of the opportunity to contest the proposed designations (Pet. 10a–11a). Petitioners attack this ruling on the ground that the doctrine requiring the exhaustion of administrative remedies does not apply because they have already been designated (Pet. 19, 29).

A default by a party to administrative proceedings, resulting in adverse administrative action, does not, however, operate to avoid the requirements of the

exhaustion doctrine. *Falbo* v. *United States*, 320 U. S. 549; *Yakus* v. *United States*, 321 U. S. 414, 433, 434; *National Council of American-Soviet Friendship* v. *Brownell*, 243 F. 2d 222, 225 (C. A. D. C.); *Olinger* v. *Partridge*, 196 F. 2d 986, 987 (C. A. 9). That doctrine requires resort to challenged administrative procedures before attempting to litigate to their validity. *E. g.*, *Myers* v. *Bethlehem Corp.*, 303 U. S. 41; *Allen* v. *Grand Central Aircraft Co.*, 347 U. S. 535; *Franklin* v. *Jonco Aircraft Co.*, 346 U. S. 868; *Fahey* v. *Mallonee*, 332 U. S. 245; *Aircraft & Diesel Corp.* v. *Hirsch*, 331 U. S. 752; *Bourjois, Inc.* v. *Chapman*, 301 U. S. 183; *Goldsmith* v. *Board of Tax Appeals*, 270 U. S. 117. This court has also held that the exhaustion doctrine applies to preclude judicial review even where, as here, the constitutional power to act is itself challenged. *E. g.*, *Allen* v. *Grand Central Aircraft Co.*, *supra*, *Franklin* v. *Jonco Aircraft Corp.*, *supra*; *Aircraft & Diesel Corp.* v. *Hirsch*, *supra*; *Myers* v. *Bethlehem Corp.*, *supra*. Should these requirements of the exhaustion rule be held inoperative in the case of a default, the basic rationale of the rule—that the exhaustion of an administrative remedy may obviate the need for any judicial determination or render more precise the scope of a decision required—would be destroyed. And the reasons for applying the doctrine are especially compelling where, as here, the litigant seeks to raise substantial constitutional issues. *Aircraft & Diesel Corp.* v. *Hirsch*, *supra*, 331 U. S. at 772–773.

2. Petitioners claim, however, that they were designated by default "because they failed to answer in-

terrogatories * * * and because they protested the interrogatories * * *" (Pet. 25), asserting that "an objection to the interrogatories is treated as a default" (Pet. 28). The contention is that they made such objections, but to no avail (Pet. 17–18, 24–25).

(*a*) But the fact is that petitioners were defaulted, not "because they protested the interrogatories", but because they failed to do so and instead rejected the entire administrative process. As this record demonstrates, the Attorney General would accept—for purposes of entitling an ogamization to the established administrative procedures—specific objections to interrogatories, made in good faith, as an alternative to direct answers. The Assistant Attorney General's letter of November 25, 1953 (W. R. 43–44) (*supra*, p. 10), responding to the letter of the Workers Association's belatedly-retained counsel, made it plain that, had the objections set forth by counsel (W. R. 42–43) been timely filed and appropriately signed, they would have been accepted in lieu of answers, and the Association would have been deemed to have complied with Section 41.3 of the Attorney General's Rules, so as to entitle it to a hearing.[5] The Court of

[4] Petitioners also claim (Pet. 27) that, on their face, the Attorney General's Rules are inconsistent with due process. This contention was likewise made and rejected in *National Lawyers Guild* v. *Brownell*, 225 F. 2d 552 (C. A. D. C.), and was raised in the petition for certiorari in that case which was denied in 351 U. S. 927. See the Brief for the Respondent in Opposition, O. T. 1955, No. 496, at pp. 17–19.

[5] This course would have been in line with that followed by the Attorney General in the case of the National Lawyers Guild. On December 30, 1953, the Attorney General granted the Guild's request for an extension of time within which to

Appeals recognized this, stating that either a reply or a challenge to the interrogatories "would have entitled [the Workers Association] to a hearing"[6] (Pet. 10a).

(*b*) It is clear that both petitioners failed to answer the interrogatories or to enter objections in appropriate form and of sufficient specificity, so as to require that they be passed upon.

(i) *The Workers Association's response.*—The Workers Association contends that its letter of September 8, 1953—the only document filed within the sixty-day period prescribed by the Rules (Section 41.3, App. *infra*, pp. 29–30)—constituted a bona fide "reply" within the meaning of Section 41.3, and that therefore the designation by default was in violation of the Attorney General's own Rules. The letter failed, however, to meet even the minimal requirements of the Rules, a copy of which was furnished to the Association with

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answer the statement of grounds and interrogatories, as well as an extension of time within which to request modification of the interrogatories. The interrogatories were thereafter amended pursuant to the Guild's application. See Part II, pp. 31–65, of the Record in No. 496, O. T. 1955, *National Lawyers Guild* v. *Brownell*, 351 U. S. 927.

[6] Judge Prettyman's dissenting view that Section 41.3 precludes objection as an alternative to answering interrogatories (Pet. 12a–14a) is difficult to reconcile with his simultaneous ruling that the Literary Association's failure to make specific objections barred relief in its case (Pet. 12a). It is also difficult to reconcile with his earlier statement in *National Lawyers Guild* v. *Brownell*, *supra*, 225 F. 2d at 558, where he stated for a unanimous court:

"We think the proper place to test these interrogatories in the first instance is before the administrative body. * * * Some modifications have already been made, and we cannot now say that others will not be made if specific application is made."

the notice of proposed designation (W. R. 21). Thus, the letter was not verified as required by Section 41.3; this alone would have been sufficient grounds for refusing to treat it as a reply. But the text of the letter further made it plain that it was intended neither as an answer to the interrogatories nor as a statement of objections to be considered and passed upon by the Attorney General. The Association asserted its innocence, complained generally that the interrogatories were impossible to answer, and attacked the Rules and hearing procedures as unconstitutional. But it did not ask that any or all of the interrogatories be modified or withdrawn; it did not request a hearing on either the question of designation or the merits of its objections; nor did it ask the Attorney General to give any consideration whatsoever to its objections. Instead, it requested the complete discontinuation of the proceedings, threatening action in the courts in the event of a failure to comply with this request (W. R. 41; *supra*, p. 10). The Attorney General rightfully interpreted this letter as a rejection of the administrative procedures, resulting in default by the Association[7] (W. R. 44).

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[7] Compare *Hammond Packing Co.* v. *Arkansas*, 212 U. S. 322, in which a corporation sued by the State of Arkansas under its anti-trust laws was subjected to a $10,000 fine by entry of a default judgment pursuant to statute after it refused to obey an order to produce witnesses and documents at a pre-trial hearing. The corporation argued that the order to produce was "so unlimited, so arbitrary and unjust as to cause it to be wanting in due process" (212 U. S. at 346). The Court ruled that all the statute required was a *bona fide* effort to comply with an order made pursuant to its provisions, and therefore "* * * any reasonable showing of an inability to

(ii) *The Literary Association's response.*—The Literary Association's statement of September 23, 1953 (L. R. 30–31), although verified, was also wholly deficient as either an answer or a challenge. Far from objecting to the interrogatories with that specificity necessary to permit the Attorney General to pass upon the objections, the statement makes no mention whatever of the interrogatories. It is no more than an argumentative pronouncement that the organization engages in innocuous pursuits and that the entire procedure is unconstitutional, ending with the abrupt declaration that "[t]he proceedings should be dismissed" (L. R. 31). This total rejection of further administrative proceedings, like that of the Workers Association, was emphasized by the Literary Association's failure to request a hearing.

3. While holding that the basic authority of the Attorney General to designate subversive organizations was not properly before it, the Court of Appeals stated that in any event it would uphold the validity of the power of designation (Pet. 11a). Petitioner strongly asserts error in this ruling (Pet. 29–33). We agree with the court below, for the reasons stated above, that that issue is not properly in this case and

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comply would have satisfied the requirements both of the statute and the order. As the Hammond Company absolutely declined to obey the order and stood upon what it deemed to be its lawful rights and privileges, even if that course of conduct was taken because of a contrary conception as to the meaning of the statute, it is not within our province to afford relief because of an error of judgment in this respect." 212 U. S. at 347.

need not be reached, but we also agree that the power exists.

As we read *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, in the light of and together with *Adler* v. *Board of Education*, 342 U. S. 485, and *Wieman* v. *Updegraff*, 344 U. S. 183, this Court has already indicated that the substantive power of the Attorney General to designate organizations pursuant to the mandate of Executive Orders 9835 and 10450 is valid under the Constitution. In the *Joint Anti-Fascist* case, the organizations involved advanced contentions identical to those put forth by petitioners here (Pet. 2–3): (a) that no designation power may validly exist, and (b) that if it does, there are restrictions on the method of its exercise which have allegedly been violated. See Brief for Petitioner, No. 8, O. T. 1950, p. 48. In deciding that case, only one of the majority Justices agreed that the listings were invalid for total lack of power in the President and the Attorney General (341 U. S. at 142, 143); three other members of the majority implicitly rejected this basic contention by accepting the secondary contention that the designations were invalid for want of notice and hearing (341 U. S. at 149, 174, 183); the three dissenting Justices flatly rejected the basic contention (341 U. S. at 187).* Less than a year later, the Court

*This was the reading given the *Joint Anti-Fascist* case by the court below in its decision in *National Lawyers Guild* v. *Brownell*, 225 F. 2d 552, 556 (C. A. D. C.), certiorari denied, 351 U. S. 927. The court there noted (225 F. 2d at 556):

"When the *Joint Anti-Fascist* case was before this court we had held flatly that the Executive Order was valid and that it authorized the listing. If the Supreme Court had been of opin-

handed down its decision in the *Adler* case, *supra*, upholding the constitutionality of a state law requiring the New York state board of regents, *inter alia*, to "* * * make a listing of organizations which it finds to be subversive * * *" (342 U. S. at 488). And in *Wieman* v. *Updegraff*, *supra*, involving a state statute establishing a loyalty oath which required state officers and employees to swear that they were not members of any organization determined by the Attorney General of the United States to be a Communist front or subversive organization, the Court assumed the general validity of the Attorney General's power to designate but struck down the particular oath for lack of a *scienter* requirement.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
PAUL A. SWEENEY,
B. JENKINS MIDDLETON,
Attorneys.

AUGUST 1957.

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ion that the Attorney General has no power whatever to designate organizations under the Executive Order, it seems to us the issue of a factual basis for a listing would have been immaterial and that the Court would necessarily have said so. Instead it remanded for such a factual determination."

APPENDIX

1. Section 9A of the Hatch Act (53 Stat. 1148, formerly 5 U. S. C. 118j), repealed but essentially reenacted as Section 118p of Title 5 by Act of August 9, 1955, Sections 1 and 4 (2), 69 Stat. 624–625), provided as follows in pertinent part:

> (1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.
>
> (2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

2. Public Law 733, 81st Congress (Act of August 26, 1950, 64 Stat. 476, 5 U. S. C. 22–1, *et seq.*), provides as follows in pertinent part:

> AN ACT To protect the national security of the United States by permitting the summary suspension of employment of civilian officers and employees of various departments and agencies of the Government, and for other purposes.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding the provisions of section 6 of the Act of August 24, 1912 (37 Stat. 555), as amended

(5 U. S. C. 652), or the provisions of any other law, the Secretary of State; Secretary of Commerce; Attorney General; the Secretary of Defense; the Secretary of the Army; the Secretary of the Navy; the Secretary of the Air Force; the Secretary of the Treasury; Atomic Energy Commission; the Chairman, National Security Resources Board; or the Director, National Advisory Committee for Aeronautics, may, in his absolute discretion and when deemed necessary in the interest of national security, suspend, without pay, any civilian officer or employee of the Department of State (including the Foreign Service of the United States), Department of Commerce, Department of Justice, Department of Defense, Department of the Army, Department of the Navy, Department of the Air Force, Coast Guard, Atomic Energy Commission, National Security Resources Board, or National Advisory Committee for Aeronautics, respectively, or of their several field services * * *.

3. Part III, Paragraph 3 of Executive Order 9835 of March 21, 1947 (12 F. R. 1938) provides as follows:

3. The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

a. The Loyalty Review Board shall disseminate such information to all departments and agencies.

4. Executive Order 10450, effective May 27, 1953 (18 F. R. 2489), provides as follows in pertinent part:

> WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and
>
> WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:
>
> NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U. S. C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U. S. C. 632, *et seq.*); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U. S. C. 118j); and the act of August 26, 1950, 64 Stat. 476 (5 U. S. C. 22–1, *et seq.*), and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:
>
> * * * * *
>
> SEC. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his

department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

* * * * *

SEC. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary, the head of the department or agency concerned shall terminate the employment of such suspended officer or employee whenever he shall determine such termination necessary or advisable in the interests of the national security in accordance with the said act of August 26, 1950.

* * * * *

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

* * * * *

(5) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force

or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of Government of the United States by unconstitutional means.

* * * * *

SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked. For the purposes described in section 11 hereof the Loyalty Review Board and the regional loyalty boards of the Civil Service Commission shall continue to exist and function for a period of one hundred and twenty days from the effective date of this order, and the Department of Justice shall continue to furnish the information described in paragraph 3 of Part III of the said Executive Order No. 9835, but directly to the head of each department and agency.

SEC. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

* * * * *

SEC. 15. This order shall become effective thirty days after the date hereof.

5. The Attorney General's Rules of Procedure for the federal employee security program (Department of Justice Regulations of April 29, 1953, 18 F. R. 2619, 28 CFR, 1956 Supp., Part 41) provide as follows:

DESIGNATION OF ORGANIZATIONS IN CONNECTION WITH THE FEDERAL EMPLOYEE SECURITY PROGRAM

By virtue of the authority vested in the Attorney General by section 22 of Title 5 of the United States Code, and by Executive Order No. 9835 of March 21, 1947, and Executive Order No. 10450 of April 27, 1953, I hereby prescribe the following rules of procedure with

respect to notice, hearing, and designation of organizations in connection with the Federal employee security program:

Sec.

41.1 Notice to and by organizations
41.2 Statement and interrogatories by Attorney General
41.3 Reply by organization
41.4 Request for hearing
41.5 Notice of hearing
41.6 Default
41.7 Hearing board or officer
41.8 Hearing
41.9 Recording of testimony
41.10 Determination
41.11 Previous designations not affected

AUTHORITY: §§ 41.1 to 41.11 issued under R. S. 161; 5 U. S. C. 22, E. O. 9835, Mar. 21, 1947, 12 F. R. 1935; 3 CFR, 1947 Supp.; E. O. 10450, Apr. 27, 1953, [18] F. R. 2489 [3 CFR, 1953 Supp.].

SECTION 41.1 *Notice to and by organizations.*—(a) Within ten days after the effective date of Executive Order No. 10450 of April 27, 1953, each organization which has been designated by the Attorney General pursuant to Paragraph 3 of Part III of Executive Order No. 9835 of March 21, 1947, may file with the Attorney General, Department of Justice, Washington, D. C., a written notice that it contests such designation. Failure to file a notice of contest within such period shall be deemed an acquiescence in such designation.

(b) Whenever the Attorney General after appropriate investigation proposes to designate an organization pursuant to Executive Order No. 9835 or Executive Order No. 10450, or both, notice of such proposed designation shall be sent by registered mail to such organization at its last known address. If the registered notice is delivered, the organization, within ten days following its receipt or ten days following the effective date of Executive Order No. 10450,

whichever shall be later, may file with the Attorney General, Department of Justice, Washington, D. C., a written notice that it desires to contest such designation. If the notice of proposed designation is not delivered and is returned by the Post Office Department, the Attorney General shall cause such notice to be published in the FEDERAL REGISTER, supplemented by such additional notice as the Attorney General may deem appropriate. Within thirty days following such publication in the FEDERAL REGISTER, such organization may file with the Attorney General, Department of Justice, Washington, D. C., a written notice that it desires to contest such designation. Failure to file a notice of contest within such period shall be deemed an acquiescence in such proposed action, and the Attorney General may thereupon after appropriate determination designate such organization and publish such designation in the FEDERAL REGISTER.

(c) The notice of contest provided in this part shall be signed by the executive officers (or persons performing the ordinary and usual duties of executive officers) of the organization which desires to contest such designation or proposed designation.

SECTION 41.2 *Statement and interrogatories by Attorney General.*—Within sixty days following receipt of a notice of contest, the Attorney General shall cause to be forwarded to the organization by registered mail a statement of the grounds upon which the designation was or is proposed to be made and written interrogatories with respect thereto. In the case of organizations designated pursuant to Paragraph 3, Part III of Executive Order No. 9835, such statement may include information obtained since the designation.

SECTION 41.3 *Reply by organization.*—The organization, within sixty days following receipt of such statement and interrogatories,

may file a verified reply which shall be signed by the executive officers (or persons performing the ordinary and usual duties of executive officers) of such organization. The reply shall answer each interrogatory completely and with particularity and shall be limited to statements of fact. The organization may also submit supporting affidavits with its reply. Failure to answer any interrogatory or any part thereof shall be deemed an admission of the truth of the facts to which such interrogatory or part thereof refers. The submission of an evasive reply to any interrogatory or any part thereof shall likewise be deemed an admission of the facts to which such interrogatory or part thereof refers. Failure of the organization to file a reply within the sixty days provided therefor shall constitute an acquiescence in designation.

SECTION 41.4 *Request for hearing.*—Any organization filing a reply as provided in this part may accompany its reply with a written request for a hearing. In the absence of such request, the Attorney General shall determine the matter on the basis of the information available to him and the reply of such organization.

SECTION 41.5 *Notice of hearing.*—Upon receipt of a request as provided in Section 41.4, the Attorney General will set a date and fix a place for hearing and notify the organization thereof by registered mail.

SECTION 41.6 *Default.*—When an organization declines or fails to appear at any scheduled hearing, the Attorney General shall without further proceedings determine the matter on the basis of the information available to him and the reply of the organization.

SECTION 41.7 *Hearing board or officer.*—For the purpose of conducting any hearing as provided in this part the Attorney General shall

assign such officer or board as he shall deem necessary.

SECTION 41.8 *Hearing.*—(a) If upon the basis of the statement, interrogatories, reply and affidavits (if any) submitted as provided in this part it appears to the board or hearing officer that a determination may appropriately be made without the taking of evidence, the proceeding may be conducted without the taking of such evidence.

(b) The Attorney General, at his election, may rely upon the statement of grounds upon which the designation was or is proposed to be made, or may introduce evidence in support thereof or supplemental thereto, or in rebuttal of any evidence received on behalf of the organization.

(c) Hearings before a board or officer shall be informal and shall be conducted in an orderly and impartial manner.

(d) An organization shall be entitled to appear by counsel or other representative of its own choice.

(e) Testimony shall be given under oath or affirmation.

(f) The ordinary rules of evidence need not be adhered to at the hearings but reasonable bounds shall be maintained as to relevancy, competency and materiality. Both the Attorney General and the organization may introduce such evidence as the board or officer may deem proper in the particular case. In the discretion of the board or officer, the affidavit of any witness may be received in lieu of his oral testimony.

(g) Whenever, in the judgment of the board or officer, the proposed testimony of any witness appears to be irrelevant, immaterial, cumulative, or repetitious, the board or officer may refuse to receive such testimony.

(h) All objections to the admission or exclusion of evidence or other rulings of the

board or officer shall be limited to a concise statement of the reasons therefor and shall be made part of the record. Argument upon such objections may be limited in the discretion of the board or officer.

(i) The board or officer shall be authorized to receive as evidence on behalf of the Attorney General information or documentary material, in summary form or otherwise, without requiring disclosure of classified security information or the identity of confidential informants.

(j) Witnesses testifying before the officer or board shall be subject to cross-examination provided that no witness on behalf of the Government shall be required to disclose classified security information or the identity of confidential informants.

(k) If in the course of a hearing any witness or other participant is guilty of misbehavior which obstructs the hearing, such person may be excluded from further participation in the hearing.

SECTION 41.9 *Recording of testimony.*—The testimony and proceedings at the hearing shall be recorded and transcribed by a person or persons designated by the Attorney General and made a part of the record. The organization, by its counsel or authorized representative, shall be entitled to inspect the transcript, and, upon request and at its cost, shall be furnished a copy thereof.

SECTION 41.10 *Determination.*—Within a reasonable time following completion of any proceeding hereunder, the Attorney General shall make a determination on the record which shall include the statement of the grounds, interrogatories, replies to the interrogatories, affidavits, and testimony elicited at the hearing and other documents and papers filed in the proceeding, and shall notify the organization of the determination by registered mail. In

making his determination the Attorney General shall take into consideration any handicap imposed upon an organization by the non-disclosure to it of classified security information or the identity of confidential informants and by reason of the lack of opportunity to cross-examine confidential informants.

SECTION 41.11 *Previous designations not affected.*—The promulgation of the rules of procedure contained in this part shall not be deemed a revocation of any designation made by the Attorney General pursuant to Paragraph 3, Part III of Executive Order No. 9835, but each such designation shall continue in effect unless the administrative process herein provided is invoked by the organization affected and upon completion thereof a contrary determination is made by the Attorney General as to such organization.

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No. 295

In the Supreme Court of the United States

OCTOBER TERM, 1957

ASSOCIATION OF LITHUANIAN WORKERS AND AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION, INC., PETITIONERS

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT SUGGESTING THAT THE CASE IS MOOT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT SUGGESTING THAT THE CASE IS MOOT

The Solicitor General, on behalf of the Attorney General, respondent herein, respectfully suggests to the Court that the above-entitled case has become moot.

1. Petitioners were designated by the Attorney General on January 22, 1954, as organizations within the purview of Executive Order 10450 (19 F. R. 655). They filed separate suits in the District Court for the District of Columbia seeking to have their respective designations set aside. The complaint of the Workers

Association[1] sought a judgment enjoining respondent from continuing to designate it and requiring him to notify all federal departments and agencies that the designation is withdrawn (W. R. 11–12). The complaint of the Literary Association, in addition to the relief sought by the Workers Association, asked the court to declare the regulatory procedures illegal and unconstitutional, and to require the Attorney General to notify the general public of the withdrawal of the designation (L. R. 7). The District Court granted the respondents' motions for judgment on the pleadings (W. R. 45; L. R. 33) and the Court of Appeals affirmed, holding that petitioners had failed to exhaust their administrative remedies (W. R. 46–56; L. R. 34–44). The petition for certiorari was filed on July 19, 1957, and the brief in opposition was filed in August 1957. This Court has, as yet, taken no action upon the petition.

2. On October 4, 1957, the Attorney General signed an order (Appendix, *infra*, p. 7) rescinding the order of January 22, 1954, as it pertains to petitioners, and removing petitioners from the list of organizations designated pursuant to Executive Order 10450. A copy of this order has been transmitted to the General Services Administration for publication in the Federal Register (Appendix, *infra*, p. 8). In addition, the Attorney General has sent a memorandum to the heads of all departments and agencies

[1] As in the petition and brief in opposition, petitioners are hereafter referred to as the Workers Association and the Literary Association and record references are designated by "W. R. ———" and "L. R. ——", respectively.

informing them of his action and requesting that they remove petitioners from their lists of designated organizations (Appendix, *infra*, pp. 8–9). Petitioners have been advised of the foregoing facts (Appendix, *infra*, pp. 9–10).

3. By rescinding the designation of petitioners and requiring publication of this fact in the Federal Register, the respondent has voluntarily accorded to petitioners all of the relief sought by them in their respective actions,[2] except insofar as the Literary Association seeks a declaratory judgment that the regulatory procedures are illegal and unconstitutional. In these circumstances, the cases have become moot. The Literary Association's additional request for a declaratory judgment does not alter this fact. Since that organization's designation has now been revoked, as requested, the request for a determination of the legality of the procedures under which it was designated no longer rests upon a justiciable case or controversy. *St. Pierre* v. *United States*, 319 U. S. 41; *Gray* v. *Board of Trustees*, 342 U. S. 517; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 416, 418; cf. *Eccles* v. *People's Bank*, 333 U. S. 426, 431–432, rehearing denied, 333 U. S. 877. As this Court said in *United Public Workers* v. *Mitchell*, 330 U. S. 75 at 90: "It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, be-

[2] Publication in the Federal Register will, of course, constitute notice of the Attorney General's withdrawal of the designations to the public generally. See Section 7 of the Federal Register Act, 49 Stat. 502, 44 U. S. C. 307; *Federal Crop. Ins. Corp.* v. *Merrill*, 332 U. S. 380, 384–385.

tween the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other."

4. We are not unmindful of the decisions indicating, generally, that mere cessation of allegedly illegal conduct may not suffice to moot a case. *E. g., Walling* v. *James V. Reuter, Inc.*, 321 U. S. 671; *Walling* v. *Helmerich & Payne*, 323 U. S. 37; *United States* v. *W. T. Grant Co.*, 345 U. S. 629. But there are very good reasons why these rulings do not apply here.

First, the basic issues petitioners raise are constitutional, and constitutional issues should not be decided, as *United Public Workers, supra,* points out, in the absence of a concrete, present, actual, and existing controversy in which a party's rights are really at stake.[3] In litigation such as *Reuter, Helmerich,* and *W. T. Grant,* in which the questions are statutory, common-law, or factual—non-constitutional issues—it is often proper to accede to the "public interest in having the legality of the practices settled" (*W. T. Grant, supra,* at 632). But the special canons of constitutional adjudication, which strongly counsel the avoidance of constitutional determinations if possible, do not permit similar leeway in a constitutional case like the present one where the petitioners will obtain nothing by a reversal of the decision below.

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[3] See, *e. g., United States* v. *Automobile Workers*, 352 U. S. 567, 589–593; *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 346–348; *Rescue Army* v. *Municipal Court*, 331 U. S. 549.

Second, in the *W. T. Grant* line-of-cases, the Government was seeking to vindicate the public interest by establishing a general rule of law, protecting some private rights affected with the public interest, or by sustaining a recurrent type of administrative order. Even in such a case, the Court has sometimes treated the case as moot where the particular concrete controversy has ended. *United States* v. *Amarillo-Borger Express, Inc.*, 352 U. S. 1028. Here, on the other hand, the petitioners seek, and can properly seek, to vindicate, not a public right, but only their own private rights and to redress their own alleged private injuries. Those claims have now been satisfied, and petitioners have no further interest to represent. They cannot even rightly claim to be acting on behalf of other organizations which challenge the Attorney General's list because no other organization has a pending court suit comparable to petitioners'.[4]

Third, the action taken by the Attorney General in petitioners' cases was not simply a "cessation" of conduct they challenge as unlawful—as is the case when a private party discontinues an asserted violation of law. The situation is just as if a challenged administrative or judicial order had been withdrawn. No official action now impinges on any asserted rights of petitioners, and there is nothing on which a court decree can now operate effectively. In the absence of a very strong showing that the challenged formal official action will shortly be repeated, we know of no

[4] A few organizations are now pursuing administrative remedies.

judicial suggestion that it can be reviewed after it is no longer effective.

5. Accordingly, it is respectfully requested that, in accordance with its established practice and in light of the suggestion made here, this Court grant the petition for certiorari, vacate the judgments below, and remand with a direction to dismiss the proceedings upon the ground that the cases are now moot. *United States* v. *Munsingwear*, 340 U. S. 36, 39–40; *Cozart* v. *Wilson*, 352 U. S. 884; *Brotherhood of Locomotive Firemen and Enginemen* v. *United States*, 343 U. S. 971; *Los Angeles Building & Construction Trades Council* v. *Le Baron*, 342 U. S. 802; *Eastern Air Lines* v. *Civil Aeronautics Board*, 341 U. S. 901; *Securities and Exchange Commission* v. *Harrison*, 340 U. S. 908; *Howard* v. *United States*, 340 U. S. 898; *Garcia* v. *Landon*, 348 U. S. 866; *United States* v. *Amarillo-Borger Express, Inc.*, 352 U. S. 1028.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

OCTOBER 1957.

APPENDIX

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
Order No. 151–57

REMOVAL OF ORGANIZATIONS FROM LIST OF ORGANIZATIONS DESIGNATED IN CONNECTION WITH THE FEDERAL EMPLOYEE SECURITY PROGRAM

Order No. 39–54 of the Attorney General dated January 22, 1954, published at 19 Federal Register 655, which concerned in part the designation of the following organizations pursuant to Executive Order No. 10450 in connection with the Federal employee security program for failure to comply with Section 41.3 of the rules of procedure with respect to notice, hearing and designation of organizations (Title 28, Chapter I, Part 41 et seq. CFR) as it pertains to these organizations is hereby rescinded, and said organizations are removed from the list of organizations designated pursuant to Executive Order No. 10450:

American Lithuanian Workers Literary Association (also known as Amerikos Lietuviu Darbininku Literaturos Draugija)
Association of Lithuanian Workers (also known as Lietuviu Darbininku Susivienijimas)

(sgd) HERBERT BROWNELL, Jr.,
Attorney General.

OCTOBER 4, 1957.

OCTOBER 4, 1957.

MR. BERNARD R. KENNEDY,
Director, Federal Register Division,
National Archives and Records Service,
General Services Administration,
Washington 25, D. C.

DEAR MR. KENNEDY: Pursuant to Section 1.201, Chapter I, Title I, Code of Federal Regulations, I am herewith transmitting for publication in the Federal Register an order of the Attorney General of October 4, 1957, entitled Removal of Organizations from List of Organizations Designated in Connection with the Federal Employee Security Program. The order is accompanied by three certified copies thereof.

Publication is desired as expeditiously as possible.

This document falls into Category 4—Notices.

Sincerely,

(sgd) HERBERT BROWNELL, JR.,
Attorney General.

Enclosures.

OCTOBER 4, 1957.

MEMORANDUM

To: Heads of Departments and Agencies.
From: The Attorney General.
Subject: Removal of organizations from list of organizations designated in connection with the Federal Employee Security Program.

Reference is made to my memorandum to you dated January 22, 1954, entitled "Designation of Organizations in Connection with the Federal Employee Security Program", which identified certain organizations to be added to the list of organizations designated pursuant to Executive Order No. 10450.

With respect to the *American Lithuanian Workers Literary Association* (also known as Amerikos Lietuviu Darbininku Literaturos Draugija) and the *Association of Lithuanian Workers* (also known as Lietuviu Darbininku Susivienijimas), I have recently reviewed the matter of their designation pursuant to the aforesaid Executive Order and have concluded that such action should be rescinded. Accordingly, you are requested to remove these organizations from your lists of organizations designated by the Attorney General pursuant to Executive Order No. 10450 in connection with the Federal Employee Security Program.

OCTOBER 4, 1957.

Registered Mail
Return Receipt Requested

ASSOCIATION OF LITHUANIAN WORKERS,
110-04 Atlantic Avenue,
Richmond Hill, New York.

GENTLEMEN: This is to advise you that I have recently reviewed the matter of the designation of the Association of Lithuanian Workers pursuant to Executive Order No. 10450 in connection with the Federal employee security program and have concluded that such action should be rescinded.

I have this day notified all Federal departments and agencies and have caused to be published in the "Federal Register" notification of the removal of your organization from the list of organizations designated pursuant to Executive Order No. 10450.

Sincerely,

(sgd) HERBERT BROWNELL, Jr.,
Attorney General.

OCTOBER 4, 1957.

Registered
Return Receipt Requested

AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION,
110–12 Atlantic Avenue,
Richmond Hill, New York.

GENTLEMEN: This is to advise you that I have recently reviewed the matter of the designation of the American Lithuanian Workers Literary Association pursuant to Executive Order No. 10450 in connection with the Federal employee security program and have concluded that such action should be rescinded.

I have this day notified all Federal departments and agencies and have caused to be published in the "Federal Register" notification of the removal of your organization from the list of organizations designated pursuant to Executive Order No. 10450.

Sincerely,

(sgd) HERBERT BROWNELL, JR.,
Attorney General.

U. S. GOVERNMENT PRINTING OFFICE: 1957